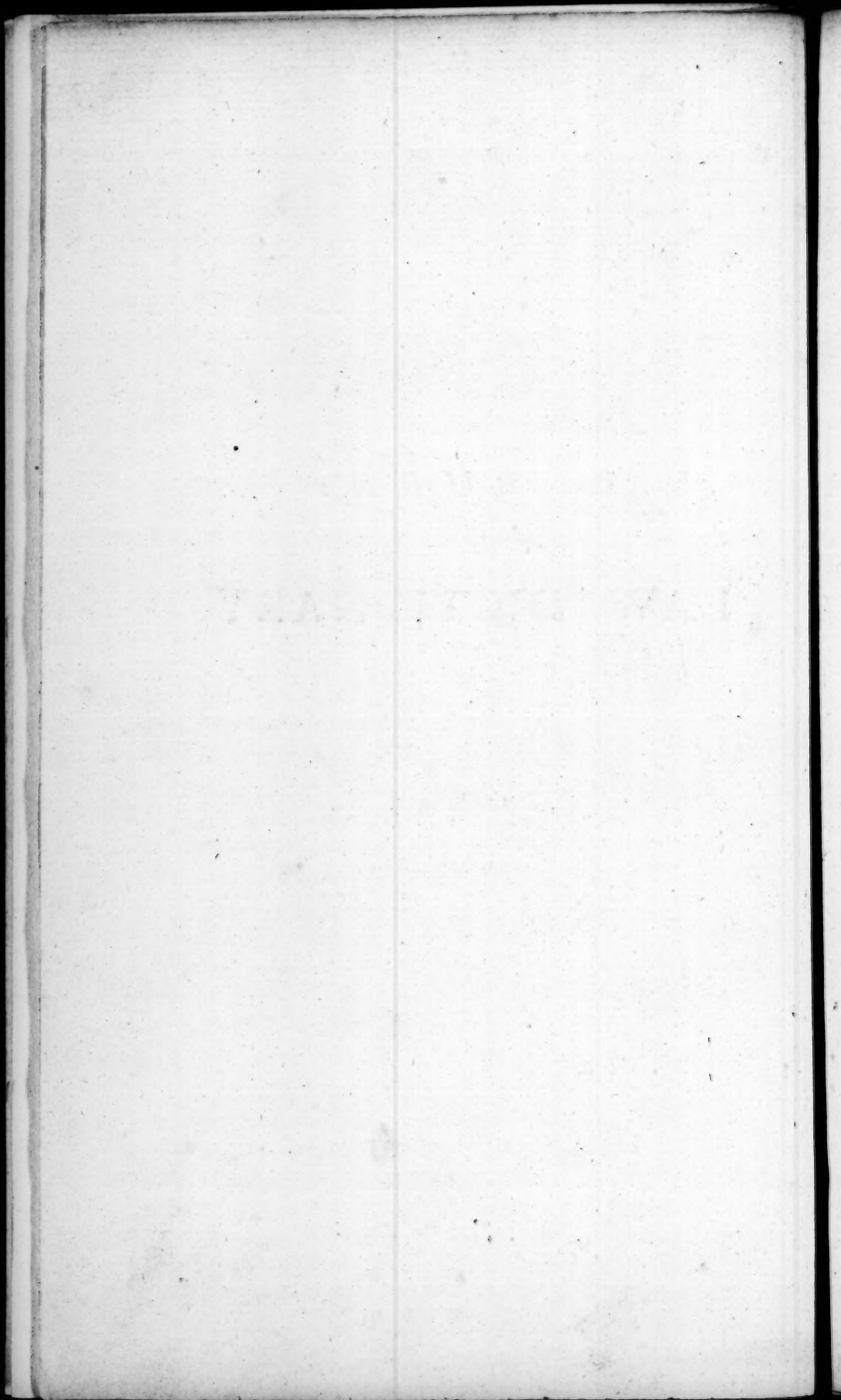


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By RICHARD BURN, LL.D.  
LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

And continued to the Present Time  
By JOHN BURN, Esq. his Son,  
ONE OF HIS MAJESTY'S JUSTICES OF THE PEACE FOR THE  
COUNTIES OF WESTMORLAND AND CUMBERLAND.

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## I D E

**JACK**, a kind of defensive coat armour, worn by horsemen in war; not made of solid iron, but of many plates fastened together; which some tenants were bound by their tenure to find upon any invasion.

**JACTITATION** of marriage, is when one of the parties *boasts*, or gives out, that he or she is married to the other, whereby a common reputation of their matrimony may ensue. On this ground, the party injured may libel the other in the spiritual court; and unless the defendant undertakes and makes out a proof of the actual marriage, he or she is enjoined perpetual silence upon that head. 3 *Black.* 93.

**JAMBEAUX**, leg armour; from *jambe*, tibia.

**JAMPNUM**, furze or goss, or ground where furze grows; as distinguished from arable, pasture, or the like.

**ICH DIEN**, I serve; a motto belonging to the prince of *Wales*. It was first the motto of *John* king of *Bohemia*, slain in the battle of *Cressy* by *Edward* the *Black Prince*; and taken up by him to shew his subjection to his father king *Edward* the third.

**IDENTITATE NOMINIS**, is a writ that lies for him who is taken and arrested in a personal action, and committed to prison for another man of the same name. In such case, he may have this writ directed to the sheriff, which is in nature of a commission to inquire whether he be the same person against whom the action is brought; and if not, then to discharge him. *F. N. B.*

Where a father has the same name and the same addition with a defendant, being his son, the action is abateable unless it had the addition of *the younger*, to the other addition;

but where the father is defendant, there is no need of the addition of *the elder*. 2 *Haw.* 187.

**IDENTITY OF THE PERSON**, is when the defendant in a criminal cause, pleads that he is not the same person that was attainted; in which case, a jury shall be impanelled to inquire concerning the identity of the person. And this shall be done immediately, and no time allowed to the prisoner to make his defence, or produce his witnesses, unless he will make oath that he is not the person attainted. 4 *Black.* 396.

**IDIOT**, is one that hath had no understanding from his birth; and therefore is by law presumed never likely to attain any. 1 *Black.* 302.

A man is not an idiot, if he hath any glimmering of reason, so that he can tell his parents, his age, or the like common matters. *Id.* 304.

By the old common law, there is a writ *de idiota inquirendo*, directed to the sheriff, to inquire by a jury, whether the party is an idiot or not; and if they find him a perfect idiot, the profits of his lands, and the custody of his person, belong to the king, according to the statute of *prerogativa regis*, 17 *Ed.* 2. c. 9. by which it is enacted, that the king shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them necessaries, of whose fee soever the lands be holden. And after the death of such idiots, he shall render it to the right heirs, so that such idiots shall not aliene, nor their heirs be disinherited.

But it seldom happens, that a jury finds a man an idiot from his nativity; but only *non compos mentis* from some particular time; which has an operation very different in point of law: for, in this case, he comes under the denomination of a *lunatic*; in which respect, the king shall not have the profits of his lands, but is accountable for the same to the lunatic when he comes to his right mind, or otherwise to his executors or administrators. 1 *Black.* 303.

Formerly, it was adjudged that the issue of an idiot was legitimate, and consequently that his marriage was valid: but it hath been since determined otherwise; for consent is absolutely necessary to matrimony; and an idiot is not capable of consenting to any thing. 1 *Black.* 438.



**IDLE AND DISORDERLY** persons, by the vagrant act, 17 G. 2. c. 5. are thus described: 1. Those that threaten to run away and leave their wives and children to the parish. 2. Persons returning without a certificate from the place to which they had been lawfully removed. 3. All those who, not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages. 4. All those who go about from door to door, or place themselves in streets or passages, to beg or gather alms in the parishes or places where they dwell. All these, for every such offence, are to be sent to the house of correction, to be kept to hard labour for a month.

**JEOfAIL** is compounded of the French *j'ay faillé*, that is, *I have failed*; and signifies an oversight in pleading, or other law proceedings. *T. L.*

Formerly, suitors to the courts were much perplexed by writs of error brought upon very slight and trivial grounds, as mis-spellings, and other mistakes of the clerks; all which might be amended at the common law, while all the proceedings were in paper, for they were then considered as only *in fieri*, and therefore subject to the control of the courts. But when once the record was made up, it was heretofore held, that by the common law no amendment could be permitted, unless within the very term in which the judicial act so recorded was done; for during the term, the record is in the breast of the court; but afterwards it admitted of no alteration. But now the courts are become more liberal; and, where justice requires it, will allow of amendments at any time while the suit is depending, notwithstanding the record be made up, and the term be past. For they at present consider the proceedings as *in fieri* till judgment is given; and therefore that, till then, they have power to permit amendments by the common law. Mistakes are also effectually helped by the statutes of *amendment* and *jeofails*, so called, because, when a pleader perceives any slip in the form of his proceedings, and acknowledgeth such error, (*jeo faile,*) he is at liberty by those statutes to amend it; which amendment is seldom actually made, but the benefit of the acts is attained by the court's overlooking the exception. These statutes are many in number, whereby all trifling exceptions are so thoroughly guarded against, that writs of error cannot

now be maintained, but for some material mistake assigned.  
3 *Black.* 406.

JETSAM, (from the French *jetter*, to cast,) is any thing cast out of a ship being in danger of wreck, which doth not float, but sinks, and remains under water.

JEWS. In seven years time, lord *Coke* tells us, from the 50 *Hen.* 3. to 2 *Ed.* 1. the king received of the Jews 420,000 *l.* 15*s.* 4*d.*; at which time, the ounce of silver was but 20*d.*, and now it is more than treble as much. 2 *Inst.* 506.

Nevertheless, in the 18 *Ed.* 1. the Jews, to the number of 15,060, were banished out of *England*; and never returned, until *Oliver Cromwell* re-admitted them.

On their banishment, the richest of them having embarked themselves with their treasure in a ship of great burthen, when the ship was under sail, and got down the *Thames* towards the mouth of the river below *Quinborough*, the master of the ship, confederating with some of the mariners, invented a stratagem to destroy them, and to bring the same to pass, commanded to cast anchor, and rode at anchor till the ship at the ebb lay on the dry sands. The master and his confederates, in further execution of their plot, moved and inticed those rich Jews to walk with the master on land for their health and recreation, which they did. At last, when the master understood the tide to be coming in, he stole away from them, and got him back to the ship. The Jews made not so much haste as he did, because they knew not the danger; but when they perceived what peril they were in, they cried out to him for help. He answered, that they ought rather to cry to *Moses*, by whose conduct their fathers passed through the Red Sea; and in a short time the water swallowed them up. The master, and such other as were consenting to this fact, were before the justices itinerant indicted, convicted of murder, and hanged. 2 *Inst.* 508.

A Jew is to be sworn on the Old Testament; and perjury may be assigned on that oath. 2 *Keb.* 313.

When any of his majesty's subjects, professing the Jewish religion, shall take the oath of abjuration, the words, upon the true faith of a Christian, shall be omitted. 10 *G.* c. 4.



Jews, on taking an oath, are allowed to put on their hats. *Str.* 821.

If a Jewish parent, in order to compel his Protestant child to change his religion, shall refuse to allow to such child a competent maintenance; the lord chancellor shall make such order therein as he shall think meet. 1 *An. st.* 1. c. 30.

IGNORAMUS (we are *ignorant* of the matter), was formerly indorsed by the grand jury on the back of a bill, for which they did not find sufficient evidence; but now, since the proceedings were in *English*, they indorse *no bill*, or *not a true bill*, or (which is the better way) *not found*. 4 *Black.* 305.

IGNORANCE, *ignorantia*, which is want of knowledge of the law, shall not excuse any man from the penalty of it. Every person is bound at his peril to take notice what the law of the realm is; and ignorance of it, though it be invincible, where a man affirms that he has done all that in him lies to know the law, will not excuse him. But though ignorance of the law excuseth not, ignorance of the fact doth; as if a person buy a horse or other thing in open market, of one who had no property therein, not knowing but he had right, in that case he hath good title, and the ignorance shall excuse him; but if he bought the horse out of the market, or knew the feller had no right, the buying in open market would not have excused. *Doct. & Stud.* 5 *Rep.* 83.

ILE, from the French *aile* (*ala*), a *wing*, is part of a church, not in the body of the church, but most commonly on one side of the church; and had its name from the form of the *Norman* churches, which were built in the form of a cross, with a nave and two *wings*.

An *ile* in a church, which hath time out of mind belonged to a particular house, and been maintained and repaired by the owner of that house, is part of his frank-tenement, and the ordinary cannot dispose of it, or intermeddle in it: and the reason is, because the law in that case presumes, that the *ile* was erected by his ancestors, or those whose estate he hath, and is thereupon particularly appropriated to their house. But no such title can be good, either upon prescription, or upon any new grant by a faculty, to a man and his heirs; but the *ile* must always be supposed to be held in respect of the house, and will always go with the house to him that inhabits it. 12 *Co.* 106.

**ILLUMINARE**, to illuminate; to draw in gold and colours the initial letters and occasional pictures in manuscript books. Those who particularly practised this art were called *illuminatores*: hence our *limners*.

**IMBARGO**, a stop, stay, or arrest, of ships or merchandize, by public authority.

**IMBEZILLING**, signifies to steal, pilfer, or purloin; or to waste, consume, or destroy, goods committed to one's charge or custody; which is prohibited by several statutes. By 31 *El. c. 4.* if any person shall, for gain, or to impede the public service, imbezil any of the king's armour, ordnance, ammunition, or habiliments of war, he shall be guilty of felony without benefit of clergy. In like manner there are several punishments inflicted by divers statutes, for imbezilling the public money, for imbezilling the public records of courts, for imbezilling the materials in divers kinds of manufacture, and many other such like.

**IMPANEL**: to impanel a jury is, to enter into a parchment schedule, by the sheriff, the names of the jury summoned to appear for the performance of such public service as juries are employed in.

**IMPARLANCE**, from the French *parler*, to speak, is a petition in court, for a day to consider or advise what answer the defendant shall make to the action of the plaintiff; being a continuance of the cause till another day, or a larger time given by the court, which is generally till the next term.

**IMPEACHMENT** (from the Latin *impetere*), is the accusation and prosecution of a person in parliament, for treason, or other crime and misdemeanor. An impeachment before the lords, by the commons of *Great Britain*, is a presentment to the most high and supreme court of criminal jurisdiction, by the most solemn grand inquest of the whole kingdom. A *commoner* cannot be impeached before the lords for any *capital* offence, but only for high misdemeanors; but a *peer* may be impeached for any crime. The articles of impeachment are a kind of bills of indictment, found by the house of commons, and afterwards tried by the lords, who are, in cases of misdemeanors, considered not only as their own peers, but as the peers of the whole nation. By statute

12 & 13 *W. c. 2.* no pardon under the great seal shall be pleadable to an impeachment by the commons in parliament.  
4 *Black.* 259.

**IMPEACHMENT OF WASTE**, is the prosecuting or *impeaching* any person for committing waste; unto which all tenants for life, or any less estate, are liable. But he who hath a lease to hold *without impeachment of waste*, hath thereby such an interest given him in the land, that he may make waste without being impeached for it; that is, without being questioned, or any demand of recompence for the waste done.  
11 *Co.* 82.

**IMPLICATION**, is where the law doth imply something that is not declared between parties in their deeds and agreements; as if a grant be made to a man of an office, generally, without adding other words, the law tacitly annexes hereto an implied *condition*, that the grantee shall duly execute his office; on breach of which condition it is lawful for the grantor, or his heirs, to oust him, and grant it to another person. 2 *Black.* 152.

An implied *contract* is such, where the terms of agreement are not expressly set forth in words, but are such as reason and justice dictate, and which therefore the law presumes that every man undertakes to perform. As if I employ a person to do any business for me, or perform any work, the law implies that I undertook or contracted to pay him as much as his labour deserves: if I take up wares from a tradesman, without any agreement of price, the law concludes that I contracted to pay their real value. *Id.* 443.

Implied *malice* is, where no malice is expressed, but is such as will arise by construction. As where a man wilfully poisons another; in this deliberate act the law presumes malice, though no particular enmity can be proved. So if a man kills another suddenly, without any, or without a considerable provocation, the law implies malice; for no person but one utterly abandoned would be guilty of such an act, upon a slight or no apparent cause. 4 *Black.* 200.

**IMPOSTORS** in religion, are such as falsely pretend an extraordinary commission from heaven, or terrify and abuse the people with false denunciations of judgments. They are punishable by fine, imprisonment, and infamous corporal punishment. 1 *Haw.* 7. And by statute 9 *G. 2. c. 5.* all persons

sons who pretend to use any kind of witchcraft, sorcery, enchantment, or conjuration; or undertake to tell fortunes; or pretend, from their skill in the occult sciences, to find out goods that have been stolen; shall be imprisoned for a year, and, once in every quarter of that year, be set on the pillory.

**IMPOTENCY**, in the ecclesiastical law, signifies an inability of generation, or propagating the species; which is cause of divorce *a vinculo matrimonii*, as being merely void, and therefore needs only a sentence declaratory of its being so.

**IMPRESSING** seamen. See **NAVY**.

**IMPRISONMENT**, is the restraint of a man's liberty under the custody of another; and extends not only to a gaol, but a house, stocks, or where a man is held in the street, or any other place; for, in all these cases, the party so restrained is said to be a prisoner, so long as he hath not his liberty freely to go about his business, as at other times. 2 *Inst.* 589.

**IMPROPRIATION**, is, properly, where a benefice ecclesiastical is in the hands of a *layman*; and *appropriation*, when in the hands of a bishop, college, or *religious* house. But they are often confounded. The impropriations, which had belonged to the monasteries, coming into the king's hands, after the dissolution of those religious societies, came from thence many of them into lay hands, by grant from the crown; and from thence are called *lay impropriations*.

**INCENDIARY LETTER**. Sending any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, or other valuable thing; or threatening to kill any of his majesty's subjects; or to *burn* any house, outhouse, barn, stack of corn or grain, hay or straw, is felony without benefit of clergy.

**INCEST**, is the carnal knowledge of persons within the Levitical degrees of kindred. These, by our law, are totally prohibited to marry with each other; and sentence of divorce, in such case, is only declaratory of the illegality of the marriage, for the marriage itself is void *ab initio*.

IN-



**INCHANTER** (*incantator*), is he that by *charms* deals with evil spirits. These *charms* were anciently called *carmina*, by reason that they were in verse. By the 9 G. 2. c. 5. all prosecutions for enchantment, conjuration, or witchcraft, are abolished; and pretending to exercise any of these incurs the penalty of imprisonment for a year, being set on the pillory four times in that year, and, further, being bound to the good behaviour at the discretion of the court.

**INCIDENT**, is a thing necessarily depending upon, appertaining to, or following, another that is more worthy or principal. A court-baron is inseparably incident to a manor; a court of piepowders, to a fair: these are so inherent to their principals, that, by the grant of one, the other is granted. Rent is incident to a reversion; timber-trees are incident to the freehold, and also deeds and charters, and a way to lands. Fealty is incident to tenures; distress, to rent and amercement; estovers of wood, to a tenancy for life or years. *Kitch.* 36. 1 *Inst.* 151.

**INCLOSURE**, pulling down; if it is done in the night time, and it is not known who did the same, the towns near adjoining shall be compelled to repair the same, and render damages. 13 *Ed. 1. st. 1. c. 46.* And by statute 9 G. 3. c. 29. if any person shall wilfully or maliciously pull down or damage any fence, made for dividing or inclosing any common or other grounds, in pursuance of any act of parliament, he shall be guilty of felony, and transported for seven years.

**INCONTINENCY**, *incontinentia*, where persons are vicious, and have no command of themselves.

**INCORPORATION**, power of. To the erection of any corporation, the king's consent is necessary, either *impliedly* or *expressly* given. The king's *implied* consent, is to be found in corporations which exist by force of the common law, to which our former kings are supposed to have given their concurrence; of this sort are all bishops, parsons, vicars, churchwardens, and some others, who, by common law, have ever been held to have been corporations by virtue of their office. Another method of implied consent is with regard to all corporations by prescription; such as the city of *London*, and many others, which have existed as corporations  
for

for time immemorial; for though the members thereof can shew no legal charter of incorporation, yet, in cases of such high antiquity, the law presumes there once was one, and that, by the variety of accidents which a length of time may produce, the charter is lost or destroyed. The methods by which the king's consent is *expressly* given, are either by act of parliament or charter; but the immediate creative act is usually performed by the king alone, in virtue of his royal prerogative. 1 *Black.* 472.

**INCORPOREAL HEREDITAMENT**, is a right issuing out of, or annexed unto, a thing corporeal; as a rent out of houses or lands; and of these incorporeal hereditaments there are divers kinds, of which the principal are advowsons, tithes, commons, ways, offices, dignities, franchises, coronies or pensions, annuities, and rents. 2 *Black.* 20.

**INCROACHMENT**, signifies an unlawful gaining upon the right of another; as where a man sets his fence too far into the ground of his neighbour that lies next to him; or a lord, by distress or otherwise, compels his tenant to pay more than he owes.

**INCUMBENT**, cometh of the word *incumbo*, to mind diligently; and signifies a clergyman that is diligently resident upon his benefice, and applies, or ought to apply, all his study to the discharge of the cure of the church to which he belongs. 1 *Infl.* 119.

**INDEBITATUS ASSUMPSIT**, is used in declarations and law proceedings, wherein the plaintiff sets forth, that the defendant being *indebted* to him in such a sum, *assumed*, undertook, or promised to pay it, but failed therein. It is an action on the *case*, wherein the plaintiff shall recover damages, according to the circumstances that shall appear to the jury; and hath generally succeeded in the place of an action of *debt*, unless where the debt is certain and determinate; for in an action of *debt*, the plaintiff recovers the whole debt he claims, or nothing. 3 *Black.* 154.

**INDEMNITY**, was a pension paid to the bishop, in consideration of discharging, or *indemnifying*, churches united, or appropriated, from the payment of procurations; or by way of recompence for the profits which the bishop would otherwise

wife have received during the time of the vacation of such churches. *Gibf. Cod.* 706. 719.

**INDENTURE** (*inſtar dentium*), is a writing, containing a conveyance between two or more, indented or cut unevenly, or in and out, on the top or ſide, answerable to another writing that likewise comprehends the same words. Formerly, when deeds were more concise than at present, it was usual to write both parts on the same piece of parchment, with some word or letters written between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part, and half on the other: and this custom is still preserved in making out the indentures of a fine. But at last, indenting only hath come into use, without cutting through any letters at all; and it seems at present to serve for little other purpose, than to give name to the species of the deed. 2 *Black.* 294.

The indenture may be *bipartite*, where there are two parts and parties to the deed; *tripartite*, where there are three parts and parties; and so *quadripartite*, *quinquepartite*, according to the number of parts and parties thereto. 1 *Inſt.* 229.

If it begins, *This indenture*, and in truth the parchment or paper is not indented, this is no indenture, because words cannot make it indented: but if the deed be actually indented, and there be no words of indenture in the deed, yet it is an indenture in law, for it may be an indenture without words, but not by words without indenting. *Id.*

When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the *original*, and the rest are *counterparts*: though of late it is most frequent for all the parties to execute every part, which renders them all originals. A deed, made by one party only, is not indented, but *polled* or shaved quite even, and therefore called a *deed-poll*, or a single deed. 2 *Black.* 294.

**INDICAVIT** (so called from those words in the writ, *indicavit nobis*), is a writ of prohibition that lieth for the patron of a church, whose clerk is defendant in the ecclesiastical court, in an action for tithes, commenced by another clerk, and extending to the fourth part of the value of the church at least; in which case the suit belongs to the king's court, by the statute of 13 *Ed.* 1. c. 5. But, at this day,



writs of *inducavit*, as well as all other real actions, are grown almost obsolete, and seldom put in practice.

**INDICTION**, *ab indicendo*, was a space of fifteen years, by which charters and public writings were dated at *Rome*; which method of computing time was also sometimes used in *England*. It began at the dismissal of the council of *Nice*, and the first year was reckoned the first of such an indictment, and so on to the number of fifteen, which was reckoned the fifteenth year of such an indictment; and the next year was the first of the next succeeding indictment.

**INDICTMENT**, is a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented on oath by, a grand jury. 4 *Black.* 302.

As an *appeal* is the suit of the party, so the indictment is always the suit of the king, and as it were his declaration; and the party who prosecutes it, is a good witness to prove it. And when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *presentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquisition*. 1 *Inst.* 126.

2. All capital crimes whatsoever, and also all kinds of inferior crimes of a public nature, as misprisions, contempts, disturbances of the peace, oppressions, and all other misdemeanors whatsoever, of a public evil example against the *common law*, may be indicted; but no injuries of a private nature, unless they some way concern the king. 2 *Haw.* 210.

Also it seems to be a good general ground, that wherever a *statute* prohibits a matter of public grievance to the liberties and security of the subject; or commands a matter of public convenience, as the repairing the common streets of a town; an offender against such statute is punishable, not only at the suit of the party grieved, but also by way of indictment for his contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it. 2 *Haw.* 210.

A fact amounting to a felony, is not indictable as a trespass. *L. Raym.* 712.

3. Indictments must have a precise and sufficient *certainity*. By the statute 1 *H.* 5. c. 5. all indictments must set forth the christian name, surname, and addition of the state, degree, and mystery of the person accused, and of the town or place,

place, and county, where he doth inhabit; and all this to identify his person. 4 *Black.* 306.

But the inhabitants of a parish may be indicted for not repairing a highway, although no person is particularly named. *Wood. b. 4. c. 5.*

4. The *time* and *place* are also to be ascertained, by naming the day, and township, in which the fact was committed: though a mistake in these points is in general not held to be material, provided the time be laid previous to the finding of the indictment, and the place to be within the jurisdiction of the court; unless where the place is laid as part of the description of the fact; and the time also may be sometimes material, where there is any limitation in point of time assigned for the prosecution of offenders; as by statute 7 & 8 *W. c. 3.* which enacts, that no prosecution shall be had for several of the treasons therein mentioned, unless the indictment be found within three years after the offence committed; and in case of murder, the time of the death must be laid within a year and a day after the mortal stroke was given. 4 *Black.* 106.

Also all indictments on any penal statute, whereby the forfeiture is limited to the king, shall be sued within two years after the offence committed; if limited to the king and prosecutor, the suit shall be in one year; and in default thereof, the same shall be sued for the king, within two years after that year ended. But where a statute limits a shorter time, the suit shall be brought within such time limited. 31 *El. c. 5.*

But where an indictment charges a man with a bare omission, as the not scouring such a ditch, it is said that it needs not shew any time. 2 *Haw.* 236.

5. If the county is in the margin, and the indictment sets forth the act to be done at such a place in the county aforesaid, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament, the fact laid at such a place, in the county aforesaid, vitiates the indictment, because two counties are named before, and therefore it is uncertain to which it refers. *Crown Circ. Comp.* 115.

And if the offence be done in the night, the indictment shall suppose it to be done in the day before; and if it happen after midnight, then it must say it was done that day after. *Lamb.* 492.

6. There

6. There are several words of art which the law hath appropriated for the description of the offence, which no circumlocution can supply; as *feloniously*, in the indictment of any felony; *burglariously*, in an indictment of burglary; and the like. 2 H. H. 184.

And if a man be indicted that he *stole*, and it is not said *feloniously*, this indictment imports but a trespass. *Id.* 172.

7. Also, in indictments, the *value* of the thing, which is the subject or instrument of the offence, must sometimes be expressed. In indictments for larceny, this is necessary, that it may appear whether it be grand or petit larceny; in homicides of all sorts, it is necessary; as the weapon, with which it is committed, is forfeited to the king as a deodand. 4 Black. 307.

8. The grand jury are only to hear evidence on behalf of the prosecution; for the finding of an indictment, is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to inquire upon their oaths, whether there be sufficient cause to call upon the party to answer it. However, they ought to be thoroughly persuaded of the truth of an indictment so far as their evidence goes; for the indictment being the foundation of all, and commonly found in the absence of the party accused, it is necessary there should be substantial proof. 4 Black. 303. 3 Inst. 25.

**INDORSEMENT**, (from *dorsum*, a back,) signifies any thing written upon the back of a deed or other instrument. On sealing of a bond, the condition of the bond may be indorsed, and then the bond and indorsement shall both stand together. The writing of a man's name on the back of a note or bill of exchange, and so in passing from one to another, every succeeding person indorsing his name, makes all the indorsers answerable as well as the drawer. In order to the executing a justice of the peace's warrant in another county, it must be indorsed by some justice in such other county, which is commonly called *backing* the warrant.

**INDUCTION**, is the giving a clerk instituted to a benefice the actual possession of the temporalities thereof, in the nature of livery of seisin. It is performed by a mandate from the bishop to the archdeacon, who commonly issues out a precept to some other clergyman to perform it for him. Accordingly, the inductor usually takes the clerk by the hand,

hand, and lays it upon the key or ring of the church door, and says to this effect: "By virtue of this mandate, I do induct you into the real, actual, and corporal possession of this church of C., with all the rights, profits, and appurtenances thereto belonging." After which, the inductor opens the door, and puts the person inducted into the church; who usually tolls a bell, to make his induction public and known to the parishioners. Which being done, the clergyman who inducts him, indorses a certificate of his induction on the archdeacon's mandate, and they who were present testify the same under their hands. And by this, the person inducted is in full and complete possession of all the temporalities of his church. And what induction worketh in parochial cures, is effected by instalment into dignities, prebends, and the like, in cathedral and collegiate churches.

INDULGENCES, in the Romish church, are the good works of the saints, over and above those that were necessary towards their own justification, together with the infinite merits of *Christ*, which are deposited, as it were, in one inexhaustible treasury. The keys of this were committed to St. *Peter*, and to his successors the popes, who may open it at pleasure, and by transferring a portion of this superabundant merit to any particular person, for a sum of money, may convey to him, either the pardon of his own sins, or a release for any one in whom he is interested, from the pains of purgatory. Such indulgences were first invented in the eleventh century by pope *Urban* the second. 2 *Robert's Hist. Cha.* V. p. 79.

IN ESSE, is any thing in *being*; and the learned make this distinction between things *in esse*, and things *in posse*; as, a thing that is not, but may be, they say is *in posse*, or *in potentia*; but what is apparent and visible, is *in esse*; that is, it hath a real being, whereas the other is casual, and but a possibility. A child before he is born or conceived, is a thing *in posse*; after he is born, he is said to be *in esse*.

INFAMOUS persons are disabled either to be witnesses or jurors. A conviction of treason or felony, or judgment for any heinous crime to stand on the pillory, or to be whipped, or branded, are good causes of exception. But no such conviction or judgment can be made use of for  
such



such disability, unless the record be actually produced in court. 2 *Haw.* 433.

And it is a general rule, that a witness shall not be asked any question, the answering to which might oblige him to accuse himself of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs of particular crimes, whereof he never was convicted. *Id.*

And the king's pardon, after a conviction or attainder, restores the party to his credit. *Id.*

**INFANGTHIEF**, from the Saxon *fang*, to take, signifies a privilege or liberty granted to the lords of certain manors to try any thief taken within their fee; as *outfangthief* was a privilege whereby the lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court. But these kinds of franchises are long since antiquated and gone. 2 *Inst.* 31.

#### INFANT:

1. The ages of male and female are different for different purposes: A male at 12 years of age may take the oath of allegiance; at 14, is of years of discretion, and therefore may consent or disagree to marriage, may chuse his guardian, and (if his discretion be actually proved), may make his testament of his personal estate; at 17, may be an executor; and at 21, is at his own disposal, and may aliene his lands, goods, and chattels. A female, at 7 years of age may be betrothed or given in marriage; at 9, is intitled to dower; at 12, is of years of maturity, and therefore may consent or disagree to marriage, and (if proved to have sufficient discretion), may bequeath her personal estate; at 14, is at years of legal discretion, and may chuse a guardian; at 17, may be executrix; and at 21, may dispose of herself and her lands. 1 *Black.* 463.

2. An infant in the mother's womb is capable of having a legacy; or a surrender of a copyhold estate made to it. It may have a guardian assigned to it, and is enabled to have an estate limited to its use, and to take afterwards by such limitation, as if it were then actually born. 1 *Black.* 130.

3. In criminal cases, an infant of the age of 14 years may be capitally punished for any capital offence; but under the age of 7 he cannot. The period between 7 & 14 is subject

subject to much uncertainty: for the infant shall, generally speaking, be judged *prima facie* innocent; yet if he was capable of discretion, and could distinguish between good and evil, he may be convicted. 1 *Black.* 464.

And generally, by the law, (as it now stands,) the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment; for one infant of 11 years old may have as much cunning as another of 14. Under 7 years of age, indeed, an infant cannot be guilty of felony; but above that age, if it clearly appear to the court and jury that he could discern between good and evil, he may be convicted and suffer death. 4 *Black.* 23.

4. By the 18 *Eliz. c. 7.* carnally knowing or abusing any woman child under the age of ten years, is felony without benefit of clergy: in which case, consent or not consent is immaterial, as by reason of her tender years she is incapable of judgment and discretion. And from the necessity of the thing, the infant may be a witness in such case; and if she hath any idea of an oath, may be also sworn; it being found, by experience, that infants of very tender years, often give the clearest and truest testimony. But where a man's life is concerned, it is desirable, in order to render her evidence credible, that there should be some concurrent testimony of time, place, and circumstances; and that the conviction should not be grounded singly on the unsupported accusation of an infant under years of discretion. 4 *Black.* 214.

5. An infant under 14, is presumed, by law, unable to commit a rape; and therefore although in other felonies, a capacity of understanding in some cases may supply the want of age, yet it seems, as to this fact, the law presumes him impotent, as well as wanting discretion. 1 *Hale's Hist.* 630.

6. The law doth in some cases privilege an infant under the age of 21, as to common misdemeanors; so as to escape being fined, imprisoned, or the like: and particularly in cases of omission, as not repairing a bridge, or a highway, or other similar offences: for not having the command of his fortune till 21, he wants the capacity to do those things which the law requires. 4 *Black.* 22.

But where there is any notorious breach of the peace, a riot, battery, or the like; for these, an infant above the age of 14, is equally liable to suffer, as a person of the full age of 21. 4 *Black.* 23.

And an infant under 14, if he commit a trespass against the person or possession of another, shall be compelled in a civil action to give satisfaction for the damage. 1 *Haw.* 2.

7. An infant shall lose nothing by non-claim, or neglect of demanding his right. 1 *Black.* 465.

8. An infant may bind himself apprentice by indenture; also he may bind himself to pay for his necessary meat, drink, apparel, physic, and such other necessaries: but if he binds himself in an obligation, or writing, with a penalty for the payment of any of these, that obligation shall not bind him. 1 *Inst.* 72.

9. An infant may present to a benefice; for the judgment of the fitness of the person presented remaineth with the bishop. 1 *Black.* 465.

10. An infant may purchase lands; but when he comes of age, he may either agree or disagree to it. *Id.* 466.

11. Generally, an infant cannot aliene his estate; but infant trustees or mortgagees are enabled to convey, under the direction of a court of equity, the estates which they hold in trust or mortgage, to such person as the court shall appoint. *Id.* 465.

And by the 29 *G. 2. c. 31.* infants may surrender leases in the courts of chancery or exchequer, in order to renew the same.

And a conveyance y lease and release by an infant, is voidable only, and not void. *Bur. Mansf.* 1794.

Also, there are several kinds of powers which infants may execute, as where an infant is a mere instrument only; as delivery of seisin, which is a mere ministerial act, and requires no judgment or discretion. 3 *Atk.* 710.

And generally, whatsoever an infant is bound to do by law, the same shall bind him although he do it without suit of law; as, if he makes equal partition, if he pays rent, if he admits a copyholder upon a surrender. *Bur. Mansf.* 1801.

12. An infant cannot be sued but under the protection of, and joining the name of his guardian: but he may sue either by his guardian, or *prochein amy*; that is, his next friend who is not his guardian. This *prochein amy* may be any person who will undertake the infant's cause. 1 *Black.* 464.

And if an infant refuseth to name a guardian to appear by, the plaintiff, by order of court, may do it for him. *Str.* 1076.



13. A guardian cannot make a lease of the infant's lands, for longer term than until his guardianship expires; if he does, the lease is void. 2 *Wilson*. 129. 135.

INFORMATIONS, are of two kinds: first, those which are partly at the suit of the king, and partly at the suit of a subject; and, secondly, such as are only in the name of the king: the former are usually brought upon penal statutes, which inflict a penalty on conviction of the offender, one part to the use of the king, and another to the use of the informer, and are a sort of *qui tam*, or popular actions, only carried on by a criminal instead of a civil process. 4 *Black*. 308.

Informations that are exhibited in the name of the king alone, are also of two kinds; first, those which are truly and properly his own suits, and filed *ex officio* by his own immediate officer, the attorney general; secondly, those in which, though the king is the nominal prosecutor, yet it is at the relation of some private person, or common informer; and they are filed by the master of the crown-office, under the express direction of the court. The objects of the king's own prosecutions, filed *ex officio* by the attorney general, are properly such enormous misdemeanors, as peculiarly tend to disturb or endanger the government: the objects of the other species of informations, filed by the master of the crown-office, upon the complaint or relation of a private subject, are any gross and notorious misdemeanors, riots, batteries, libels, or other immoralities of an atrocious kind, not peculiarly tending to disturb the government, but which, on account of their magnitude, or pernicious example, deserve the most public animadversion. And when an information is filed either thus, or by the attorney general *ex officio*, it must be tried by a petit jury of the county where the offence arises; after which, if the defendant be found guilty, he must resort to the court of king's bench for his punishment. *Id*.

Of near affinity to an information *qui tam*, is an action upon the statute; which is either a *private* action, when an action is given upon a statute to the king, and to the party grieved only; or a *popular* action, where the action is given to the *people* in general; that is, to any one that will sue for the king and for himself.

By 31 *El. c. 5*. informations on any penal statute, whereby the forfeiture is limited to the king, shall be brought

within two years after the offence committed; if limited to the king, and to any other who shall prosecute, then within one year; and, in default of such prosecution, then to be brought for the king in two years after that year ended.

Forasmuch as an information differs from an indictment in little more than this, that the one is found by the oath of twelve men, and the other is not so found, but is only the allegation of the officer or person who exhibits it; whatsoever certainty therefore is required in an indictment, the same, at least, is necessary also in an information. And the statutes of jeofails, which remedy oversights in pleading, extend not to informations. 2 *Haw.* 260.

By the 18 *El. c. 5.* if any person informing under pretence of a penal law, shall make any composition without leave of the court, or take any money or promise from the defendant to excuse him, he shall forfeit 10*l.* and stand two hours on the pillory, and shall be for ever disabled to sue on any popular or penal statute.

The court of king's bench will not grant an information against a justice of the peace for an error in judgment only, or for having acted illegally, in the execution of his office; but will leave the party injured to his ordinary remedy at law: but if the justice acts with partiality, malice, or corruption, an information will be granted. *Bur. Mansf.* 561.

Also the court will grant an information against a parish officer, for procuring a poor man of another parish to marry a poor woman of his own parish, in order to get the woman settled in that other parish. *Id.* 2106.

But in the case *K. v. Compton et al. H. 23 G. 3.* an information was denied against the overseers of *Doncaster*, for conspiring to prevail upon a soldier to marry a poor woman of their parish, then big with child, in order to throw her upon another parish; on the ground, that great inconvenience had been felt from the practice of obliging persons in low circumstances, to shew cause against informations at a great expence; as justice might be as effectually had by way of indictment. *Cald. Cas.* 246.

ING, *Sax.* a watery meadow.

INGRESS, *egress*, and *regress*, are words in leases of land, to signify a free entering into, going forth of, and returning from,

from, some part of the lands let; as to get in a crop of corn, or the like, after the term is expired.

**INGROSSING**, (from *in*, and *gross*, great or whole,) is the getting into one's possession, or buying up large quantities of corn, or other dead victual, with intent to sell the same again. This was formerly punishable by the statute 5 & 6 Ed. 6. c. 14. which statute being repealed by the 12 G. 3. c. 71. the same remains now only an offence at common law, punishable by fine and imprisonment.

**INHABITANTS**, of a town or parish, with respect to the public assessments, and the like, are not only those who dwell in an house there, but also those who occupy lands within such town or parish, although they be dwelling elsewhere. But the word inhabitants doth not extend to lodgers, servants, or the like; but to householders only. 2 Inst. 702.

**INHERITANCE**, *hereditas*, is a perpetuity in lands or tenements, to a man and his heirs; and the word inheritance is not only intended where a man hath lands or tenements by descent, but also every fee-simple, or fee-tail, which a person hath by purchase, may be said to be an inheritance, because his heirs may inherit it. Litt. f. 9.

Inheritances are *corporeal* or *incorporeal*. *Corporeal* inheritances, relate to houses and lands, which may be touched or handled; and *incorporeal* hereditaments, are rights issuing out of, annexed to, or exercised with corporeal inheritances; as advowsons, tithes, annuities, offices, commons, franchises, privileges, and services. 1 Inst. 49.

There are several rules of inheritances of lands, according to which, estates are transmitted from ancestor to heir; viz. 1. That inheritances shall lineally descend to the issue of the person last actually seised, *in infinitum*, but shall never lineally ascend. 2. The male issue shall be admitted before the female. 3. Where there are two or more males in equal degree, the eldest only shall inherit; but the females altogether. 4. The lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living: thus the child, grandchild, or great grandchild (either male or female), of the eldest son, succeeds before the younger son, and so *in infinitum*. 5. On failure of issue of the person last seised, the inheritance shall

descend to the blood of the first purchaser. 6. The collateral heir of the person last seized, must be his next collateral kinsman of the whole blood. 7. In collateral inheritances, the male stocks shall be preferred to the female, unless where the lands have descended from a female: thus the relations on the father's side are admitted, *in infinitum*, before those on the mother's side are admitted at all; and the relations of the father's father, before those of the father's mother, and so on. 2 *Black. c. 14.*

**INHIBITION**, is a writ to forbid a judge from a farther proceeding in a cause depending before him, being in nature of a prohibition. It most commonly issues out of an higher court christian to an inferior, upon an appeal. But there are also inhibitions on the visitations of archbishops and bishops: thus, when the archbishop visits, he inhibits the bishop; and when the bishop visits, he inhibits the archdeacon. And this is to prevent confusion. *T. L.*

**INJUNCTION**, is a kind of prohibition granted in divers cases. It is generally grounded upon an interlocutory order or decree out of the court of chancery or exchequer, to stay proceedings in courts of law. It is also sometimes granted to quiet the possession of lands, or to stay waste. *West. Symb. sec. 25.*

It is sometimes also issued to the spiritual courts; as, particularly, where there is a trust, or any thing in the nature of a trust, notwithstanding the ecclesiastical court may have an original jurisdiction, as in the case of legacies, yet the chancery will grant an injunction to stay the proceedings. 1 *Atk. 491.*

An injunction may be prayed at various stages of the cause, according to the circumstances of the case. If the bill be to stay execution upon an oppressive judgment, and the defendant doth not put in his answer within the stated time allowed by the rules of the court, an injunction will issue of course; and, when the answer comes in, the injunction can only be continued upon a sufficient ground, appearing from the answer itself. But if an injunction be granted to stay waste, or other injuries of an equally urgent nature, then upon the filing of the bill, and a proper case supported by affidavit, the court will grant an injunction immediately, to continue till the defendant hath put in his answer, and till the court shall make some farther order



order concerning it: and, when the answer comes in, whether it shall be then dissolved or continued till the hearing of the cause, is determined by the court upon argument, drawn from considering the answer and affidavit together.

3 *Black.* 443.

The court will grant an injunction at the suit of a ground landlord, to stay waste in an under-lessee, who holds by lease from the original lessee. 3 *Atk.* 723.

A remainder man in fee may have an injunction to stay waste in the first tenant for life, notwithstanding an intermediate estate for life. *Id.*

If a mortgagee cuts down timber, and doth not apply the money arising from the sale in sinking the interest and principal, the mortgagor may have an injunction to stay waste. *Id.*

So where the mortgagor commits waste, the court will grant the mortgagee an injunction; for they will not suffer the mortgagor to prejudice the incumbrance. *Id.*

**INLAGH**, a person under the protection of the law, as an *outlaw* is a person put out of its protection.

**INLAND**, *terra interior*, the inner or inclosed land, was the demesne of the lord; as that which was let to tenants was called *outland*. In an ancient will are these words: "To *Wulfey* I give the *inland* or demesnes; and to *Elfey* the *utlands* or tenancy." *Testam Brittherici*. This word was in great use among the *Saxons*, and often occurs in *Domesday*.

An *inland bill of exchange* is where the person that draws the bill, and he upon whom it is drawn, do both of them reside within the kingdom; as a *foreign bill of exchange* is, where one of the parties resides out of the kingdom. So *inland trade* is that which is carried on within the kingdom; as *foreign trade* is that which is carried on by a merchant within this kingdom, with his correspondent abroad.

**INMATE**, is one that is admitted to dwell in the same house with another person, not being able to provide an house for himself. Inmates, by the 31 *El. c.* 7. were prohibited to be admitted in cottages: but by 15 *G. 3. c.* 32. the said statute of the 31 *El.* is repealed; setting forth, that the same had laid the industrious poor under great diffi-

ficulties to procure habitations, and tended very much to lessen population.

INNS, *hospitia*, were instituted for lodging and relief of travellers; and at common law any man might erect and keep an inn or alehouse, but now they are to be licensed by justices of the peace. For which, see ALEHOUSES.

INNUENDO, (from *innus*, to nod or beckon with the head,) is a word used in declarations and law pleadings, to ascertain a person or thing which was named before; as to say, he (innuendo the plaintiff) did so and so, when there was mention before of another person. In an action of *slander*, for instance, two things are requisite; first, that the *person* slandered be certain; and next, that the *words* be certain which contain the slander. As to the *person*: If a man say, without any previous communication, that one of the servants of *A. B.* (he having several servants) is a notorious felon; here, for the uncertainty of the *person*, no action lieth, and an innuendo cannot make this certain: but when the *person* hath been once named in certain, as if two speaking of *J. S.* one of them saith, he is a notorious felon, this is certain enough, and an innuendo will be admitted to shew the person intended. So as to the *words*: If a man say, that such a one had the pox, innuendo the French pox, this will not be admitted, because the French pox was not mentioned before, and the words shall be construed in a more favourable sense. But, if in discourse of the French pox, one say, that such an one had the pox, innuendo the French pox, this will be admitted to render that certain which was uncertain before. 4 Co. 17.

INPENY, and *outpeny*, money paid by the customs of certain manors, on being admitted to, or on the alienation of lands within the manor.

INQUEST OF OFFICE, is an inquiry made by the king's officer, sheriff, coroner, or escheator, by virtue of their office, or by writ to them sent for that purpose, or by commissioners specially appointed, concerning any matter that intitles the king to the possession of lands or tenements, goods or chattels. This is done by a jury of no determinate number, being either twelve, or less, or more. As, to inquire, whether one  
who

who held immediately of the king died without heirs, in which case the lands belong to the king by escheat; whether one be attainted of treason, whereby his estate is forfeited to the crown; whether one who hath purchased lands is an alien, which is another cause of forfeiture; whether such a one be an idiot, in which case he and his lands appertain to the custody of the king: and while the military tenures subsisted, to inquire of what lands the king's tenant died seised, who was his heir, and of what age, in order to intitle the king to the wardship, marriage, relief, and other advantages. And with regard to other matters, the inquests of office still remain in force; as in the case of wreck, treasure trove, and the like, and especially as to forfeitures for offences: for every jury which tries a man for treason or felony, every coroner's inquest that sits upon a *felo de se*, or one killed by misadventure, is, in all respects, an inquest of office; and if they find the treason or felony, or even the flight of the party accused, (though innocent,) the king is thereupon, by virtue of this office, found intitled to have his forfeitures.

3 *Black.* 258.

Some of these inquisitions are in themselves convictions, and cannot afterwards be traversed or denied; and therefore the inquest ought to hear all that can be alleged on both sides: of this nature are all inquisitions of *felo de se*; of flight in persons accused of felony; of deodands, and the like; and presentments of petty offences in the sheriff's tourn or court leet, whereupon the presiding officer may set a fine. Other inquisitions may be afterwards traversed and examined; as particularly the coroner's inquisition of the death of a man; for, in such cases, the offender may be arraigned upon the inquisition, and dispute the truth of it.

4 *Black.* 301.

**INQUISITION POST MORTEM**, was an inquiry by the escheator in every county, upon the death of any of the king's tenants *in capite*, what lands such tenant held in such county, what was the yearly value thereof, who was his heir, and of what age; in order to intitle the king to his relief, wardship, marriage, or other advantages, as circumstances should require.

**INROLLMENT**, (*irrotulatio*,) is the registering or entering in the rolls of the chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records



cords of the quarter sessions, of any lawful act; as a statute or recognizance acknowledged, a deed of bargain and sale of lands, and the like: but the inrolling a deed doth not make it a record, though it thereby becomes a deed recorded; for there is a difference between matter of record, and a thing recorded to be kept in memory; a record being the entry in parchment of judicial matters controverted in a court of record, and whereof the court takes notice; whereas an inrollment of a deed is a private act of the parties concerned, of which the court takes no cognizance at the time of doing it, although the court gives way to it. 2 *Lill. Abr.* 69.

The inrolling must be in parchment only, for the strength and continuance thereof; though the indenture may be either in parchment or paper. 2 *Inst.* 673.

By statute 27 *H. 8. c.* 16. no lands shall pass, whereby any estate of inheritance or freehold shall take effect, or any use thereof be made, by reason only of any bargain and sale thereof, except the bargain and sale be made by writing indented, sealed, and within six months inrolled in one of the king's courts of record at *Westminster*; or else within the county where the lands lie, before the clerk of the peace, and one or more justices. But by 5 *Eliz. c.* 26. in the counties palatine, they may be inrolled in the respective courts there, or at the assizes.

Deeds and wills of papists must in like manner be inrolled, otherwise no interest therein will pass. 3 *G. c.* 18.

By the mortmain act, 9 *G. 2. c.* 36. no lands, nor money to be laid out in lands, shall be given to any charitable use, unless it be by deed executed twelve months before the death of the donor, and inrolled in chancery in six months after execution; and unless the same be made to take effect immediately.

By several special acts of parliament, memorials of deeds and wills are to be registered in several parts of the county of *York*, and elsewhere; in order to render it more easy to borrow money on land security.

Every deed before it is inrolled, is to be acknowledged to be the deed of the party, before a master of chancery, or a judge of the court wherein it is inrolled; which is the officer's warrant for inrolling the same; and the inrollment of a deed, if it be acknowledged by the grantor, will be good proof of the deed itself upon a trial. 2 *Lill. Abr.* 69.

But a deed may be inrolled without the examination of the party himself; for it is sufficient if oath is made of the execution.

execution. If two are parties, and the deed is acknowledged by one, the other is bound by it. And if a man lives abroad, and would pass lands here in *England*, a nominal person may be joined with him in the deed, who may acknowledge it here, and it will be binding. 1 *Salk.* 389.

If after execution of the deed, and before the inrollment, either party dies; yet the land hereby passes, if the deed be inrolled within six months after the execution: so if there be two bargains and sales of the same land to two several persons, and the last deed is first inrolled, and afterwards the first deed is also inrolled within six months; the first buyer shall have the land; for when the deed is inrolled, the buyer is seised of the land from the delivery of the deed, and the inrollment shall relate to it. *Wood. b. 2. c. 3.*

INSIDIATORES VIARUM, are persons that lie in wait, in order to the commission of felony, or other misdemeanors. These were always excluded by the common law from the benefit of clergy; and, therefore, sometimes these words were put in indictments of felony, on purpose to deprive the offenders of that benefit: and this caused the statute of 4 *Hen. 4. c. 2.* to be made, to put these words out of indictments, and to allow benefit of clergy if they were in them.

INSIMUL COMPUTASSENT, is a writ that lies upon a stated account between two merchants or other persons; in which case the law implies, that he against whom the balance appears hath engaged to pay it to the other, though there be not any actual promise: and from this implication, it is frequent for actions on the case to be brought, declaring that the plaintiff and defendant had settled their accounts together, *insimul computassent*, and that the defendant engaged to pay to the plaintiff the balance, but hath since neglected to do it: if no account has been made up, then the legal remedy is, by bringing a writ of account, *de computo*, commanding the defendant to render a just account to the plaintiff, or shew to the court good cause to the contrary. 3 *Black.* 162.

INSOLVENT. An act of insolvency is an occasional act frequently passed by the legislature, whereby all persons whatsoever, who are either in too low a way of dealing to come within the statutes of bankruptcy, or not being in a mercantile

mercantile state of life, are not included within the bankrupt laws, are discharged from all suits and imprisonment, upon delivering up all their estate and effects to their creditors upon oath, at the assizes or sessions; in which case, if they be guilty of fraud or perjury, they are commonly punished with death. 2 Black. 484.

By the statute 32 G. 2. c. 28. if a defendant charged in execution for any debt under 100*l.* will surrender all his effects to his creditors (except his apparel, bedding, and tools of his trade, not amounting, in the whole, to the value of 10*l.*), and make oath of his punctual compliance with the statute, he may be discharged, unless the creditor insists on detaining him; in which case, he shall allow him 2*s.* 4*d.* a week, to be paid on the first day of every week, and, on failure of regular payment, the prisoner shall be discharged. Yet the creditor may, at any future time, have execution against the lands and goods of the defendant, though never more against his person. And, on the other hand, the creditors may compel (under pain of transportation), such debtor charged in execution for any debt under 100*l.* to make a discovery and surrender of all his effects for their benefit; whereupon he is also intitled to a like discharge of his person. 3 Black. 416.

INSPEXIMUS, is a word in letters patent; reciting a former grant, *inspeximus*, (we have seen,) such former grant; and so reciting the same *verbatim*, and then granting such further privileges as are thought convenient.

INSTALLMENT. Payment of debt by installment, is where several future days are appointed for discharging the debt, part at one time, and part at another. If a man be bound in a bond, or by contract to another, to pay 100*l.* at five several days, he shall not have an action of debt before the last day be past: and so note a diversity between duties which touch the realty, and the mere personalty. But if a man be bound in a recognizance to pay 100*l.* at five several days, presently after the first day of payment, he shall have execution upon the recognizance for that sum, and shall not tarry till the last day be past; for that it is in the nature of several judgments: and so note a diversity between a debt due by recognizance, and a debt due by bond or contract. And so it is of a covenant or promise; after the first default, an action of covenant, or an action upon the

the case, doth lie, for they are several in their nature: where also note a diversity between debts and covenants, or promises. 1 *Inst.* 292.

*Installment*, in case of ecclesiastical dignities, is putting the party into actual possession; as placing a prebendary in his *stall* in the quire.

INSTANTER, instantly, immediately; as where a person who hath been for some time attainted of felony, is brought into court, and it is demanded of him what he hath to allege why execution should not be awarded against him; if he denies that he is the same person, this shall be tried *instantly*, by a jury immediately, without giving him time to make his defence, or produce his witnesses, unless he will make oath that he is not the person attainted. 4 *Black.* 396.

INSTITUTION, to a benefice, is that whereby the ordinary commits the cure of souls to the person presented; as by induction he obtains a temporal right to the profits of the living. Previous to the institution, there are several oaths and subscriptions requisite to be taken and made before the ordinary; as, the oath against simony, the oaths of allegiance and supremacy, and (if it is a vicarage) the oath of residence; and to subscribe the thirty-nine articles, and the articles concerning the king's supremacy and the book of common prayer.

INSUPER, is used by auditors in their accounts in the exchequer; as when so much is charged upon a person as due on his account, they say so much remains *insuper* to such accountant.

INSURANCE, amongst merchants, is where a man, for a sum of money paid to him by a merchant, obligeth himself to make good the loss of a ship, or goods therein, or both. 2 *Black.* 458.

*Bottomry*, is in nature of a mortgage of a ship, when the owner borrows money to enable him to carry on his voyage, and pledges the *bottom* (that is, in effect the whole of it) as a security for the repayment; in which case, it is understood, that, if the ship be lost, the lender loses his whole money; but, if it returns in safety, then he shall receive back his money, and also the premium agreed upon, in consideration



consideration of the extraordinary hazard run by the lender, however it may exceed the legal rate of interest: and in this case, the ship and tackle, if brought home, are answerable, as well as the person of the borrower, for the money lent. *Ibid.*

But if the loan is not upon the vessel, but upon the goods and merchandize, which must necessarily be sold or exchanged in the course of the voyage; then only the borrower, personally, is bound to answer the contract; who, therefore, in this case, is said to take up money at *respondentia* (which he himself will answer for). *Ibid.*

Insurances, being contracts, the very essence of which consists in observing the purest good faith and integrity, are therefore vacated by any the least shadow of fraud or undue concealment; and, on the other hand, being much for the benefit of trade, they are greatly encouraged and protected both by the common law and acts of parliament. *Ibid.*

But as a practice had obtained of insuring large sums without having any property on board, which were called insurances, *interest or no interest*, and also of insuring the same goods several times over, both of which were a species of gaming, and therefore were denominated *wagering* policies; it is enacted by the 19 G. 2. c. 37. that all these kinds of insurance shall be void; and that no re-insurance shall be lawful, except the former insurer shall be insolvent, a bankrupt, or dead; and that, in the *East India* trade, the lender of money on bottomry, or at *respondentia*, shall alone have a right to be insured for the money lent; and the borrower shall (in case of a loss) recover no more upon any insurance than the surplus of the property, above the value of his bottomry, or *respondentia* bond.

But different persons may insure various interests on the same thing; and each to the whole value. *Bur. Mansf.* 494.

When a ship has been long missing, and no advice is had of her, the premium runs proportionably high; and, in that case, these words are usually inserted in the policy, *lost or not lost*; and if it so happens, that at the time of the subscription the ship is cast away, yet the insurer shall be answerable.

An insurance of the ship, tackle, and furniture, against perils of the sea, fire, and other accidents in a voyage to and from such a port, and the ship stays in the passage to clean and refit, during which time the sails and furniture  
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are, for security, carried into a storehouse at land, and there accidentally burned; this doth not make the policy void, but the insurers shall be answerable. *Bur. Mansf.* 347.

But if the loss happens by the alteration of the voyage, or variation of the chance, or other fault of the owner or master of the ship, the insurer ceases to be liable. *Ibid.*

Otherwise it is, if the thing be done for just cause; as if a ship warranted to depart with convoy, goes out of the way in order to have the opportunity of convoy, this is no deviation. *Ibid.*

It is established upon a principle of convenience, that a man shall not recover more than he has lost. Insurance is an indemnity only, in case of a loss; and therefore the satisfaction ought not to exceed the loss. *Bur. Mansf.* 492.

And if the insured is to receive but one satisfaction, natural justice requires that the several insurers shall all of them contribute *pro rata*, to satisfy that loss, against which they have all insured. *Ibid.*

Where a man makes a double insurance of the same thing, in such a manner that he can recover against several insurers in distinct policies a double satisfaction, the law says, that he ought not to recover doubly for the same loss, but be content with one single satisfaction for it; and if the whole be recovered from one, he ought to stand in the place of the insured, to receive contribution from the other who was equally liable to pay the whole. *Ibid.*

Generally, if an insured ship be taken by the enemy, the insured may demand as for a total loss, and abandon to the insurer; but he cannot by abandoning, turn what was in its nature an average loss into a total loss. *Bur. Mansf.* 697.

Writers and nations differ in opinion with respect to the change of property by capture of the enemy: some hold it to be as soon as the engagement is over; some hold that the prize must be brought into some of the enemy's ports; others, that 24 hours quiet possession by the enemy is the criterion; the *English* courts of admiralty, not till after sentence of condemnation. But as between insurer and insured, the ship is lost by the capture; and the insurer must indemnify the insured, as to the loss actually sustained; and he shall stand in the place of the insured, in case of a recapture or abandonment. *Bur. Mansf.* 694.

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By the 11 G. c. 29. if any owner of, or captain, master, mariner, or other officer, belonging to any ship, shall wilfully cast away, burn, or otherwise destroy the same, with intent to prejudice any person that shall underwrite any policy of insurance thereon, or any merchant having goods therein; he shall be guilty of felony without benefit of clergy.

**INTENDMENT.** The intent of the parties in deeds and other instruments is much regarded by the law. With respect to wills, lord *Coke* says, the intention of the testator is the pole star to guide the judges in the exposition thereof: yet such intention must be collected out of the words, and it must consist with the law. *Swinb.* 10. The intendment shall sometimes supply that which is not fully expressed or apparent; and when a thing is doubtful in some cases, intendment may make it out. Also, many things shall be intended after verdict in a cause to make a good judgment; but intendment cannot supply the want of certainty in a charge in an indictment for any crime. 2 *Haw.* 227. 441.

**INTER CANEM ET LUPUM**, between the dog and the wolf; the twilight: for when the night begins, the dog sleeps, and the wolf seeketh his prey. 3 *Inst.* 63.

**INTERCOMMONING**, is where the commons of two manors lie together, and the inhabitants of both have, time out of mind, depastured their cattle promiscuously in either.

**INTERDICT**, is an ecclesiastical censure, whereby the divine services are prohibited, either to particular persons, or in particular places, or both. And both these kinds of interdict have been frequently exercised heretofore, upon whole villages, towns, provinces, and even kingdoms; till they should make satisfaction for injuries done, or abstain from injuries they were doing to the church. *Lindw.* 320.

In the year 1208, the pope excommunicated king *John* and all his adherents, and put the whole kingdom under an interdict; which began the first *Sunday* after *Easter*, and continued six years and one month.

During the time of interdict, baptism was allowed, because of the frailty and uncertainty of life; but the holy  
eucharist

eucharist was not allowed, except in the article of death; so also Christian burial was denied in any consecrated place, except it were done without divine offices.

But this censure hath been long difused; and nothing of it appears in the laws of church or state since the reformation. *Gibf. Cod.* 1047.

**INTERDICTED** *of fire and water*, were anciently those persons who suffered banishment for some crime; by which judgment, order was given that no man should receive them into his house, but should deny them *fire and water*, the two necessary elements of life.

**INTEREST**, is vulgarly taken for a term, or chattel real, and more particularly for a future term; in which case it is said in pleading, that he is possessed of the interest of the term (*de interesse termini*). But in legal understanding, it extends to estates, rights, and titles, that a man hath of, in, to, or out of lands, for he is truly said to have an interest in them; and by the grant of his whole interest in such lands, as well reversions as possessions in fee-simple shall pass. *1 Inst.* 345.

**INTEREST OF MONEY.** See **USURY**.

**INTERLINEATION.** When a deed is altered in any material point, either by interlineation, rasure, addition, or by drawing a pen through the line, or through the middle of any word material, this will vacate the deed, unless a memorandum be made thereof at the time of the execution and attestation. *11 Co.* 27.

**INTERLOCUTORY JUDGMENTS**, are such as are given in the middle of a cause, upon some plea, proceeding, or default; which is only intermediate, and doth not finally determine or complete the suit. *3 Black.* 295.

**INTERPLEADER**, bill of, is where a person who owes a debt or rent to one of the parties in suit in the chancery, but, till the determination thereof, he knows not to which of them, desires that they may *interplead*, that he may be safe in the payment. In this case it is usual to order the money to be paid into court, for the benefit of such of the parties, to whom, upon hearing, the court shall decree it to be

VOL. II.

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due: and the plaintiff must annex an affidavit to his bill, swearing, that he doth not collude with either of the parties. 3 *Black.* 448.

INTERROGATORIES, are particular questions demanded of witnesses brought in to be examined in a cause, especially in the courts modelled by the rules of the civil law. And these interrogatories must be exhibited by the parties in suit on each side; which are either *direct* for the party producing them, or *counter* on behalf of the adverse party; and generally both plaintiff and defendant may exhibit interrogatories. They are to be pertinent, and only to the points necessary, and either drawn or perused by counsel and signed by them. If the interrogatories are leading, such as to say, "Did you not see such a thing?" the deposition thereupon ought not to be admitted; for it should be, "Did you see, or did you not see?" without leaning to either side. The commissioners who examine witnesses upon interrogatories, must examine only to one interrogatory at a time; and take what comes from the witnesses, without asking any impertinent questions, or putting down any nugatory answers not relating to the interrogatories.

INTESTATE, is when a man dies having made no disposition of his personal estate by will. In which case, by the old law, the king was intitled to seize upon his goods, as the general trustee of the whole kingdom. Afterwards, the king, in favour of the church, granted this prerogative to the ordinary; who therefore might seize upon the intestate's goods, and give, aliene, or sell them as he pleased, and dispose of the money to pious uses, for the benefit of the soul of the deceased. Lastly, the ordinary, by special acts of parliament, was required to grant administration of the effects of the deceased to the widow or next of kin; who shall first pay the debts of the deceased, and then distribute the surplus amongst the kindred, in the manner and according to the proportions directed by the 22 & 23 C. 2. c. 10. commonly called the statute of distribution.

INTRUSION, is where a tenant for term of life dieth seized of certain lands and tenements, and a stranger enters thereon, after such death of the tenant, and before any entry of him in remainder or reversion. This entry and interposition of the stranger differs from an *abatement*, in that  
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an *abatement* is always to the prejudice of the *heir* or immediate *devisee*; an *intrusion* is always to the prejudice of him in *remainder* or *reversion*. The remedy in either of these cases may be by entry of the legal owner, without being put about to bring his action; for the original entry of the wrong doer being unlawful, the law allows this easy remedy by the mere entry of him that hath right, provided that he enter without force and violence, and provided that the intruder is living, and consequently no descent cast, for in case of a descent, the rightful owner shall not enter without bringing his action.

In case of intrusion into an ecclesiastical benefice, where the intruder gets possession, and holds the same with force and violence, a writ issues to the sheriff *de vi laica amovenda*; that is, to abate and remove the force; and the writ being returned into the king's bench, the offenders shall there be fined, and restitution awarded to the party intruded upon.

**INVENTORY**, is a list or schedule of all the goods and chattels which a person deceased died possessed of, with their value appraised by indifferent persons; which every executor or administrator ought to exhibit to the ordinary, at such time as he shall appoint. And by the ecclesiastical law, if an executor or administrator, without making an inventory, shall intermeddle himself with the goods of the deceased (except in certain cases, as for the expences of the funeral, and necessary preservation of the goods), he is bound to answer to every one of the creditors his whole debt. Also, it is said, that every legatee may recover his whole legacy; for in such case the law presumes, that there are sufficient goods to pay all the legacies, and that the executor doth secretly and fraudulently subtract the same. Whereas, otherwise, the executor is presumed not to have any more goods which were the testator's, than are described in the inventory. And, therefore, if any creditor or legatee doth affirm, that the testator had any more goods than are comprised in the inventory, he must prove the same; otherwise the judge is to give credit to the inventory, being lawfully made. *Swinb.* 228.

And in equity, although the not exhibiting an inventory is not conclusive evidence of a sufficiency of assets, yet it is a violent presumption; and the court always inclines strongly against an executor or administrator; since he may at

any time relieve himself by an inventory, if he finds a deficiency of assets. 1 *Vezey*, 75.

But as to the value of the goods upon the appraisement, it is not conclusive, nor very much regarded at the common law; for if it is too high, it shall not be prejudicial to the executor or administrator; and if it be too low, it shall be no advantage to him: but the very value found by the jury, when it comes in question whether the executor hath fully administered, or hath assets or not, is that which is binding. *Wentw. Execut.* 83, 4.

IN VENTRE SA MERE, in his mother's womb, is, where a woman is with child at the time of her husband's death, which child, if born, would be heir to the land of the husband. And the law hath consideration of such child, on account of the apparent expectation of his birth. For a devise to an infant *in ventre sa mere* is good by way of future executory devise. And where a daughter comes into land by descent, the son born after shall oust her and have the land. 3 *Co.* 61.

INVESTITURE, is the giving possession of lands by actual seisin. The ancient feudal investiture was, where the vassal on the descent of lands was admitted in the lord's court, and there received his seisin, in the nature of a renewal of his ancestor's grant, in the presence of the rest of the tenants: but, in after-times, entering on any part of the lands, or other notorious possession, was admitted to be equivalent to the formal grant of seisin and investiture. 2 *Black.* 209.

The manner of grant was by words of pure donation, *have given and granted*: which are still the operative words in our modern infeudations or deeds of feoffment. This was perfected by the ceremony of corporal investiture, or open and notorious delivering of possession in the presence of the other vassals. *Id.* 53.

But a corporal investiture being sometimes inconvenient, a symbolical delivery of possession was in many cases anciently allowed; by transferring something near at hand, in the presence of credible witnesses, which by agreement should serve to represent the very thing designed to be conveyed; and an occupancy of this sign or symbol was permitted as equivalent to the occupancy of the land itself. Among the Jews, the ceremony was, a man plucked off his shoe and gave it to his neighbour. Among the ancient Goths and Swedes,

Swedes, the witnesses extended the cloak of the buyer, whilst the seller cast a clod of the land into it. With our Saxon ancestors, the delivery of a turf was a necessary solemnity. And to this day, the conveyance of many of our copyhold estates is made from the seller to the lord, or his steward, by delivery of a rod or verge, and then from the lord to the purchaser by a re-delivery of the same, in the presence of a jury of tenants. 2 *Black.* 313.

**INVOICE**, a particular account of merchandize, with its value, customs, charges, and the like, sent by a merchant to his factor or correspondent in another country.

**JOCALIA**, jewels, or ornaments for women, which they peculiarly call their own property.

**JOINDER IN ACTION**, is coupling or joining of two in a suit or action against another. *F. N. B.*

**JOINDER IN DEMURRER**, is an issue joined in matter of law. It confesses the fact to be true, as stated by the opposite party, but denies that, by the law arising upon those facts, any injury is done to the plaintiff, or that the defendant has made out a sufficient excuse. The opposite party avers it to be sufficient, which is called a joinder in demurrer; and then the parties are at issue in point of law. 3 *Black.* 314.

**JOINDER OF ISSUE**. An issue of fact, is where the fact only, and not the law, is disputed. And when he that denies or traverses the fact pleaded by his antagonist, has tendered the issue, thus, "and this he prays may be inquired of by the country," or, "and of this he puts himself upon the country," it may be immediately subjoined by the other party, "and the said *A. B.* doth the like." Which done, the issue is said to be joined; both parties having agreed to rest the fate of the cause upon the truth of the fact in question. 3 *Black.* 315.

**JOINT ACTIONS**. In personal actions, several wrongs may be joined in one writ; but actions founded upon a tort, and a contract, cannot be joined, for they require different pleas and different process. 1 *Keb.* 847. 1 *Vent.* 336.



JOINTENANTS are, as if a man was seised of certain lands or tenements, and infeoffeth two, three, or more, to have and to hold to them and their heirs, or leases to them for term of their lives, or for the term of another's life, by force of which feoffment or lease they are seised, these are jointenants. *Litt. sect. 277.*

So also a jointenancy may be made by fine, recovery, bargain and sale, release, confirmation, or otherwise, except only by descent; whereas an estate in co-parcenary is always by descent, and an estate in common is always by several titles. 1 *Inst.* 18.

It is the nature of jointenancy, that he who surviveth shall have the whole. As if there be three jointenants in fee simple, and one hath issue and dieth; yet they which survive shall have the whole tenements, and the issue shall have nothing. And if the second jointenant hath issue and dieth, yet the third which surviveth shall have the whole tenements to him and his heirs for ever. But otherwise it is of coparceners; for if there be three coparceners, and before any partition made, one of them hath issue and dieth, that which belonged to her shall descend to her issue; and if she died without issue, that which belonged to her shall descend to her coheirs, so as they shall have this by descent, and not by survivor, as jointenants shall have. *Litt. sect. 280.*

And survivor holdeth place regularly as well between jointenants of goods and chattels in possession, or in right, as jointenants of inheritance or freehold. As if a horse be given to two, he who surviveth shall have the horse only. 1 *Inst.* 182.

But for the encouragement of husbandry and trade, it is held, that stock on a farm, though occupied jointly, and also stock in a joint undertaking, by way of partnership in trade, shall always be considered as common, and not as joint property; and there shall be no survivorship therein. 2 *Black.* 399.

Jointenants must have one and the same interest; one jointenant cannot be intitled to one period of duration or quantity of interest in lands, and the other to a different; one cannot be tenant for life, and the other for years; one cannot be tenant in fee, and the other tenant in tail. 2 *Black.* 181.

They must also have an unity of title: their estate must be created by one and the same act or grant; it cannot arise  
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by descent or act of law, but merely by purchase or acquisition by the act of the party. *Ibid.*

There must also be an unity of *time*: their estates must be vested at one and the same period, as in case of a present estate made to two persons, or a remainder in fee after a particular estate; in either case they are jointenants of this present estate, or this vested remainder. *Ibid.*

Also there must be an unity of *possession*; they each of them have the entire possession, as well of every parcel, as of the whole. They have not, one of them a seisin of one half or moiety, and the other of the other moiety; neither can one be exclusively seised of one acre, and his companion of another; but each hath an undivided moiety of the whole, and not the whole of an undivided moiety. 2 *Black.* 182.

So livery of seisin to one is livery of seisin to them both; the entry of one is the entry of them both; rent reserved to be paid to one, shall enure to them both. But by construction of the statute of *Westminster*, 2. c. 22. one jointenant may have an action of waste against the other; and by the 4 *An. c.* 16. jointenants may have actions of account against each other. 2 *Black.* 182, 3.

Jointenants must jointly implead, and be jointly impleaded by others; which property is common to them and coparceners. 1 *Inst.* 180.

Jointenants may make partition, or one party may by the statute of the 31 *H. 8. c.* 1. and 32 *H. 8. c.* 32. compel the other to make partition; which must be by deed: that is to say, all the parties must by deed actually convey and assure to each other the several estates, which they are to take and enjoy separately. 2 *Black.* 324.

And by the 8 & 9 *W. c.* 31. an easier method of carrying on the proceedings on a writ of partition, of lands held either in jointenancy, parcenary, or tenancy in common is marked out, than had been provided by the common law. 2 *Black.* 189.

If one jointenant alienes and conveys his estate to a third person, the jointenancy is severed, and turned into tenancy in common; though, till partition made, the unity of possession continues. But a devise of one's share by will is no severance of the joint estate; for the will doth not take effect till after the death of the testator, and by such death the right of the survivor hath accrued, and is already vested. 2 *Black.* 185, 6.

A JOINTURE, strictly speaking, signifies a joint estate, limited to both husband and wife; but, in common acceptation, it extends also to a sole estate, limited to the wife only, and may be thus defined: *viz.* a competent livelihood of freehold for the wife of lands and tenements, to take effect, in profit or possession, presently after the death of the husband; for the life of the wife at least. 2 *Black.* 137.

By the statute of the 27 *H. 8. c. 10.* if a jointure be made to the wife, it is a bar of her dower, so as she shall not have both jointure and dower. And to the making of a perfect jointure within that statute, six things are to be observed: 1. Her jointure is to take effect presently after her husband's decease. 2. It must be for the term of her own life, or greater estate. 3. It must be made to herself, and to no other for her. 4. It must be made in satisfaction of her whole dower, and not of part of her dower. 5. It must either be expressed or averred to be in satisfaction of her dower. 6. It may be made either before or after marriage. 1 *Inst.* 32.

A jointure hath a great advantage over dower in one respect: the jointress may enter without any formal process; whereas no small trouble, and a very tedious method of proceeding, is necessary to compel a legal assignment of dower. 2 *Black.* 139.

Notwithstanding her dower or jointure, the wife shall have all her chattels real, and bonds again, unless her husband altered the property in his life-time: also her proportion of chattels real and personal, upon an administration and distribution, if the husband dies intestate. 1 *Inst.* 351.

JOKELET, *yokelet*, a little farm, such as requires a small yoke of oxen to till it.

JOUR, *Fr.* a day. So *journal*, a day-book, or diary, *Journeyman*, a person in trade who works for another by the day.

IPSO FACTO, in the ecclesiastical law, is a censure of excommunication immediately incurred for divers offences: but this is not to be so understood as to condemn any person without a lawful trial; but he must first be found guilty in the proper court, and then the law gives this judgment,

IRELAND,

**IRELAND.** At the time of the conquest of *Ireland* by king *Hen. 2.* the Irish were governed by what they called the Brehon law, so styled from the Irish name of judges, who were denominated Brehons; but king *John*, in the twelfth year of his reign, introduced the English laws: and the Irish method of passing acts of parliament was then nearly the same as in *England*. But in the tenth year of *Hen. 7.* Sir *Edward Poynings* being then lord deputy, certain statutes were made (which from him were called *Poynings' laws*), one of which enacts, that before any parliament be summoned or holden, the chief governor and council of *Ireland* shall certify to the king the considerations and causes thereof, and the articles of the acts proposed to be passed therein; and that after the king in his council of *England* shall have considered, approved, or altered the said acts or any of them, and certified them back under the great seal of *England*, and shall have given licence to summon and hold a parliament, then the same shall be summoned and held; and therein the said acts so certified, and no other, shall be proposed, received, or rejected.—But the usage now is, that bills are often framed in either house, under the denomination of heads for a bill or bills; and in that shape they are offered to the consideration of the lord lieutenant and privy council; who, upon such parliamentary intimation, or otherwise upon the application of private persons, receive and transmit such heads, or reject them without any transmission, to *England*. 1 *Black.* 99.

Where a debt is contracted in *England*, and a bond is taken for it in *Ireland*, it shall carry Irish interest; for it must be considered as referable to the place where it is made: but if it were a simple contract debt only, it ought to carry English interest, the variation of place in this case making no difference. 2 *Atk.* 382.

Justices of the peace in *England* may transmit a person offending against the Irish law, in order to his being sent over. *Str.* 848.

**ISSUE**, is a single, certain, and material point *issuing* out of the allegations and pleas of the plaintiff and defendant; consisting regularly of an affirmative and negative, to be tried by a jury. 1 *Inst.* 126.

It is twofold; *general*, and *special*:

The *general* issue is, what traverses, thwarts, and denies at once the whole declaration, without offering any special matter



matter whereby to evade it; and it is called the *general issue*, because, by importing an absolute and general denial of what is alleged in the declaration, it amounts at once to an issue; that is, a fact affirmed on one side, and denied on the other: as when, to a trespass, the defendant pleads not guilty. 3 *Black.* 305.

*Special*, is that whereby the defendant doth not wholly deny the charge alleged against him, but means to palliate the charge, and apprize the court and the opposite party of the nature and circumstances of the defence; as, in assault and battery, where the defendant pleads, that the plaintiff struck first. *Id.*

But of late, the courts in some instances, and the legislature in many more, have permitted the *general issue* to be pleaded, and allowed the *special* matter to be given in evidence at the trial. *Id.* 305, 6.

A *feigned issue*, is that whereby an action is brought for a *feigned cause*, by consent of the parties, to determine some disputed right, without the formality of pleading, and thereby to save much time and expence in the decision of a cause. 3 *Black.* 452.

JUDGMENT, is the sentence of the law, pronounced by the court, upon the matter contained in the record. And it may be given in the four following respects: 1. Upon default; as if the defendant puts in no plea at all to the plaintiff's declaration. 2. By confession; where the defendant acknowledges the action, which is often done by consent of both parties, with a stay of execution till a certain time, to save charges, where the action is just; as in case of an action of debt, it is usual for a debtor (in order to strengthen a bond creditor's security) to execute a warrant of attorney to confess a judgment; which judgment, when confessed, is conclusive. 3. Upon demurrer; as when the defendant in an action of debt pleads a bad plea in bar, and the plaintiff demurs in law upon it, and the court gives judgment for the plaintiff to recover his debt, costs, and damages. But if it were in an action on the case, a writ of inquiry of damages must be awarded before judgment on the demurrer. 4. On trial of the issue; where the court gives damages without writ of inquiry. *Wood, b. 4. c. 4.* 3 *Black.* 397.

And as in an action on the case, so a judgment in trespass, covenant, or the like, is not a perfect judgment until

til writ of inquiry of damages taken out and executed upon it, of which notice is to be given to the defendant, and of the time of execution. But in an action of debt, it is a perfect judgment as soon as signed, and there needs no writ of inquiry. 2 *Lill. Abr.* 105.

Judgments are either *interlocutory* or *final*:

*Interlocutory* judgments are such as are given in the middle of a cause, upon some plea, proceeding, or default, which is only intermediate, and doth not finally determine or complete the suit; as upon dilatory pleas, where the judgment in many cases is, that the defendant shall answer over; that is, put in a more substantial plea. *Id.* 396.

*Final* judgments are such as at once put an end to the action, by declaring that the plaintiff hath either intitled himself, or hath not, to recover the remedy he sues for. 3 *Black.* 398.

By the statute of frauds, 29 *C. 2. c. 3.* judgments, as against purchasers of lands *bona fide* for valuable consideration, shall relate only to the time they were signed, and not (as before the said act) to the first day of the term, or the day of the return of the original, or filing the bail; and writs of execution of the defendant's goods shall bind the property only from the time that the writ is delivered to the sheriff; who shall, upon receipt of the writ, indorse the time when he received it.

And for the better discovery of judgments in the courts at *Westminster*, there is a particular method of entering the same directed by the 4 & 5 *W. c. 20.* And no judgment, not so entered, shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors, or administrators, in their administration of their ancestors, testators, or intestates estates.

The course for one to acknowledge a judgment for debt is, for him that doth acknowledge it, to give a general warrant of attorney to any attorney, or to some particular attorney of that court where the judgment is to be acknowledged, to appear for him at his suit, against the party who is to have the judgment acknowledged unto him, and thereupon to confess judgment for the sum demanded, together with costs of suit.

In the *Easter* term, 15 *C. 2.* it was ordered by the court of king's bench, that an officer shall not take any warrant to confess a judgment of any person in his custody, unless an attorney

attorney for the defendant is present, and subscribes his name to such warrant. 3 *Salk.* 212.

And, *E. 4 G. 2.* the court, taking notice of great inconveniences following from holding a warrant to confess judgment by one in custody to be good if any attorney (though for the opposite party) was present, made a rule, that, for the future, there shall be an attorney present on the behalf of the defendant. *Str.* 902.

An action of covenant brought, and an interlocutory judgment that he shall recover; before final judgment, the defendant dies, and his executor confesses a judgment to a bond creditor; he may plead this in bar to a *scire facias* on the action of covenant. 2 *Atk.* 386.

**JUNCARE**, to strew rushes; as was of old the custom of accommodating churches, and the very bed-chamber of princes.

**JUNCARIA**, a place where rushes grow. 1 *Inst.* 5.

**JURATS**, *jurati*, (jurats,) are in nature of aldermen for the government of many corporations,

**JURIDICAL DAYS**, days in court, on which the law is administered.

**JURISDICTION**, is an authority or power which a man hath to do justice in causes of complaint brought before him. The courts and judges at *Westminster* have jurisdiction all over *England*; and are not restrained to any county or place: but all other courts are confined to their particular jurisdictions; which, if they exceed, whatever they do is erroneous. 2 *Lill. Abr.* 120.

There are three sorts of inferior jurisdictions: 1. To *hold pleas*, which is the lowest, and the party may either sue there, or in the king's courts. 2. The *cognizance of pleas*; and by this, a right is vested in the lord of the franchise to hold pleas; and he is the only person that can take advantage of it, by claiming his franchise. 3. An *exempt* jurisdiction; as, where the king grants to some city, that the inhabitants shall be sued within their city, and not elsewhere. 3 *Salk.* 79.

Inferior

Inferior jurisdictions cannot be intended, but they must be properly set out. *Bur. Mansf.* 2244.

On a plea to the jurisdiction, it must be shewn what other court has jurisdiction. *1 Vez.* 202.

**JURIS UTRUM**, is a writ that lies for the succeeding incumbent of a benefice, to recover the lands or tenements belonging to the church, which were aliened by his predecessor: and it is so called, in like manner as most of the other writs in the register, from certain words in the writ respecting the special matter for which the writ is brought.

### JURORS:

1. *Antiquity of trial by jury.* Trial by jury is the Englishman's birthright; and is that happy way of trial, which, notwithstanding all revolutions of times, hath been continued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of this state, and one of the pillars of it both as to age and consequence. *Trial per pais*, 3.

2. *How many to be returned.* Upon a grand jury there may be, and usually are, more than 12; but if there be twelve assenting, though others dissent, it is not necessary for the rest to agree: but, upon a trial by a petit jury, it can be by no more, nor less, than 12, and all assenting to the verdict. *2 Hale's Hist.* 161.

3. *By whom to be returned.* Generally, the return of jurors belongs to the office of the sheriff; but if the sheriff be not an indifferent person, as if he be a party in the suit, or be related either by blood or affinity to either of the parties, he is not then trusted to return the jury; but the *venire* shall be directed to the coroners of the county. If any exception lies to the coroners, the *venire* shall be directed to two clerks of the court, or two persons of the county named by the court, and sworn; and these two, who are called *elisors*, or electors, shall, indifferently, name the jury; and their return is final, no challenge being allowed to their array. *3 Black.* 354.

4. *Summons.* Every summons of jurors shall be made by the sheriff or his officer six days before at least; in *Wales* eight days; and in the counties palatine, fourteen days; shewing to the person summoned, the warrant under seal of the office; and if he is absent, the officer shall leave under his hand notice thereof with some person inhabiting in his dwelling house. *7 & 8 W. c.* 32.



5. *Special jury.* Special juries were originally introduced in trials at bar, when the causes were of too great nicety for the discussion of ordinary freeholders, or where the sheriff was suspected of partiality, though not upon such apparent cause as to warrant an exception to him: he is, in such cases, upon motion in court, and a rule granted thereupon, to attend the prothonotary, or other proper officer, with his freeholders' book, and the officer is to take indifferently 48 of the principal freeholders, in the presence of the attorneys on both sides; who are each of them to strike out 12, and the remaining 24 are returned upon the panel. By the statute 3 G. 2. c. 25. either party is intitled, upon motion, to have a special jury struck upon the trial of any issue, as well at the assises as at bar; he paying the extraordinary expence, unless the judge will certify (in pursuance of the statute 24 G. 2. c. 18.) that the cause required such special jury. 3 *Black.* 357.

6. *Common jury.* A common jury is one returned by the sheriff, according to the directions of the statute 3 G. 2. c. 25. which appoints that the sheriff shall not return a separate panel for every separate cause, but one and the same panel for every cause to be tried at the same assises, containing not less than 48 jurors, nor more than 72; and that their names, being written on tickets, shall be put into a box or glass, and when each cause is called, 12 of these persons whose names shall be first drawn out of the box, shall be sworn of the jury. *Id.* 358.

7. *Jury of view.* In case a view of the place in question shall be thought necessary by the court, six or more of the jurors returned, to be agreed on by the parties, or named by a judge or other proper officer of the court, shall be appointed by special writ of *habeas corpora* or *disfringas*, to have the matters in question shewed to them by two persons named in the writ; and then such of the jury as have had the view, or so many of them as appear, shall be sworn on the inquest, previous to any other jurors. 4 *An. c.* 16. 3 G. 2. c. 25.

8. *Challenge.* Challenge of jurors is of two kinds; either to the *array*, by which is meant the whole jury as it stands *arrayed* in the *panel*, or little square *pane* of parchment on which the jurors names are written; or to the *polls*, by which are meant the several particular persons or *heads* of the array. 1 *Inst.* 156. 158.

Challenge to the *array*, is in respect to the bias, partiality, or default of the sheriff, coroner, or other officer that made

made the return. If the sheriff or other officer be of kindred to either party, or if any one or more of the jury be returned at the denomination of either party, this is a good cause of challenge to the array. 1 *Inst.* 156.

Challenge to the *polls*, is in respect of particular jurors; as, if such juror be interested in the cause, if he hath taken money of either party, if he hath been convicted of an infamous offence, and in a variety of other instances.

Where the challenge against a juror is in respect of partiality, the validity thereof shall be referred to the determination of *triers*, whose office it is to decide whether the juror be favourable or unfavourable. If the challenge be made before any jurors are sworn, the court shall chuse the triers; if two are sworn, they shall try; and if they try one indifferent, and he be sworn, then he and the two triers shall try another; and if another be tried indifferent, and he be sworn, then the two triers cease, and the two that are sworn on the jury shall try the rest. The trier's oath is, "You shall well and truly try, whether *A. B.* stand indifferent between the parties to this issue: So help you God." 1 *Inst.* 158. 1 *Salk.* 152.

If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two coroners, and sometimes by two of the jury returned. 2 *Hals's Hist.* 275.

A juror may himself be examined on oath of *voir dire*, (*veritatem dicere*,) with regard to such causes of challenge as are not to his dishonour or discredit; but not with regard to any crime, or any thing which tends to his disgrace or disadvantage. 1 *Inst.* 158.

In criminal cases, or at least in capital ones, a *peremptory* challenge is allowed to the prisoner without shewing any cause: but this peremptory challenge shall not be allowed to the king; for it is provided by the 33 *Ed.* 1. *st.* 4. that he who challenges a juror for the king, shall shew cause, and the truth thereof shall be inquired into by the court. However, it is held, that the king need not assign his cause of challenge till all the panel is gone through, and unless there cannot be a full jury without the persons so challenged. In case of treason or felony, the prisoner, by the common law, might peremptorily challenge 35, which was under the number of three juries; and in case of treason, the law continues so still; but in case of murder and other felonies, the statute 22 *Hen.* 8. *c.* 23. reduced the number to 20; but if  
the

the party challenges above that number, he shall not have judgment of death, but his challenge shall be over-ruled, and he shall be put upon his trial. 2 *Haw.* 413. 2 *Hale's Hist.* 270.

9. *Tales.* If by means of challenges, or other cause, a sufficient number of unexceptionable jurors doth not appear at the trial, either party may pray a *tales*; that is to say, a supply of *such* men as are returned on the first panel, in order to make up the deficiency. These tales-men (*tales de circumstantibus*) may be returned of the persons present in court; and, at *nisi prius*, they shall be returned out of the other panels returned to serve at the same assises. 7 & 8 *W. c.* 32.

10. *Verdict.* After the evidence given upon the issue, the jury ought to be kept together, without meat or drink, fire or candle, unless by permission of the judge, till they are all unanimously agreed: if they eat or drink, or have any eatables about them, without consent of the court, and before verdict, it is fineable; and if they do so at his charge for whom they afterwards find, it will set aside the verdict: also, if they speak with either of the parties or their agents, after they are gone from the bar, or if they receive any fresh evidence in private, or if to prevent disputes they cast lots for whom they shall find; any of these circumstances will intirely vitiate the verdict. 3 *Black.* 375.

After they are agreed, they may, in causes between party and party, if the court be risen, give a *private* verdict to the judge out of court; and then they may eat and drink; and the next morning in open court they may either affirm, or alter, their private verdict, and that which is given in court shall stand. 1 *Inst.* 227.

Sometimes, if there arises in the case any difficult matter of law, the jury will find a *special* verdict, wherein they state the naked facts as they find them to be proved; concluding, conditionally, that if upon the whole matter the court shall be of opinion that the plaintiff had cause of action, then they find for the plaintiff; if otherwise, then for the defendant. 3 *Black.* 377.

Another method of finding the matter specially, is when the jury find a verdict for the plaintiff, subject nevertheless to the opinion of the judge, or the court above, on a *special case* stated by the counsel on both sides, with regard to a matter of law; which has this advantage over a special verdict, that it is attended with much less expence, and obtains a speedier

a speedier decision; but it has this disadvantage, that if either of the parties is dissatisfied with the judgment of the court or judge upon the point of law, they are precluded hereby from the benefit of a writ of error. 3 *Black.* 378.

But in both these instances, the jury may, if they think proper, take upon themselves to determine, at their own hazard, the complicated question of fact and law; and, without either special verdict, or special case, may find a verdict absolutely either for the plaintiff or defendant. *Id.*

In *criminal* cases, which touch life or member, the jury cannot give a *private* verdict; but they may give a *special* verdict, if they think fit, setting forth all the circumstances of the case, whether (for instance) on the facts stated, it be murder, manslaughter, or no crime at all. But, if they give a general verdict, and it be apparently wrong, or contrary to the direction of the judge, yet they are not punishable for it by the judge; but the court of king's bench hath sometimes set aside a verdict which found a prisoner guilty, contrary to evidence, and ordered a new trial; but in no case hath a new trial been granted when the prisoner was acquitted.

**JUS PATRONATUS**, is a commission from the bishop, directed usually to his chancellor and others of competent learning; who are to summon a jury of six clergymen, and six laymen, to inquire into and examine who is the rightful patron of a church. And this is, when the church is become litigious by the presentation of two several patrons of their clerks to a void church within the six months. In this case, the bishop may, if he pleases, suspend the admitting either the one clerk or the other, and suffer lapse to incur, without awarding a *jus patronatus*; but upon request of either party, patron, or clerk, he must award it: and then, if he admits the clerk according to the verdict found, and certificate of the commissioners, he secures himself from being a disturber, though the right in a *quare impedit* shall be afterwards found for the other. 3 *Black.* 246.

**JUSTICES OF THE PEACE**, are persons appointed by the king's commission to keep the peace; unto which office is annexed a power to hear and determine offences.

The estate sufficient to qualify a justice of the peace, must be 100 *l.* a year, clear of all deductions; of which he must make oath before he acts.



He must also, before he acts, take the oath of office; which is usually done before some persons in the country, by virtue of a *dedimus potestatem* out of chancery.

Sheriffs, coroners, and attorneys, may not act as justices of the peace.

The power, office, and duty of this magistrate, extends to an almost infinite number of instances, specified in some hundreds of acts of parliament, and every year accumulating.

The commission of the peace doth not determine by the death of the king, nor until six months after, unless sooner determined by the successor: but, before his death, the king may determine it, or may put out any particular person; which is most commonly done by a new commission, leaving out such person's name.

JUSTICE-SEAT, is the highest court of the forest, being always holden before the chief justice *in eyre*, or chief itinerant judge, *capitalis iusticiarius in itinere*, or his deputy, to hear and determine all trespasses within the forest, and all claims of franchises, liberties, and privileges, and all pleas and causes whatsoever therein arising. It may also proceed to try presentments made in the inferior courts of the forest, and to give judgment upon the convictions that have been made in the swainmote courts. It may be held every third year. This court may fine and imprison, being a court of record; and a writ of error lies to the court of king's bench. 2 *Black.* 72.

JUSTICIES, is a writ directed to the sheriff to do *justice* in a plea of trespass *vi et armis*, or of any sum above 40 *s.* in the county court; of which he hath not cognizance by his ordinary power. It is in the nature of a commission to the sheriff; and is not returnable. 4 *Inst.* 266.

JUSTIFICATION, *justificatio*, is a maintaining or showing good reason in court why one did such a thing which he is called to answer. *Broke.*

## K A L

KAIAGE, toll money paid for loading or unloading goods at a *key* or wharf.

KALENDAR MONTH, consists of 30 or 31 days, (except *February*, which hath but 28, and in leap-year 29 days,) according

according to the kalendar; twelve of which months make a year. 16 C. 2. c. 7. 24 G. 2. c. 23. 25 G. 2. c. 30.

**KARL**, *Sax.* a servant or person employed in husbandry. Hence the place where they inhabited was often denominated *Carleton*: so *huscarl*, a household or domestic servant.

**KEELAGE**, a privilege to demand money for the bottom of ships resting in a port or harbour.

**KIDEL**, a dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of weels or other engines to catch fish. 2 *Inst.* 38.

**KIDNAPPING**, is the forcible abduction or stealing away of man, woman, or child, from their own country, and sending them into another; which, by the civil law, was punished with death, and undoubtedly is a very heinous and grievous crime, as it robs the king of his subject, banishes a man from his country, and may, in its consequences, be productive of the most cruel and disagreeable hardships; and therefore, by our law, is punishable by fine, imprisonment, and pillory. And also the statute 11 & 12 W. c. 7. though principally intended against pirates, hath a clause that extends to prevent the leaving of such persons abroad, as are thus kidnapped, or spirited away; by enacting, that if any captain of a merchant vessel shall (during his being abroad), force any person on shore, or wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and desirous to return, he shall suffer three months imprisonment.

**KING**. By statute 35 *Hen.* 8. c. 3. the king's style and title were declared to be, "*Henry the eighth, by the grace of God, king of England, France, and Ireland, defender of the faith, and of the church of England, and also of Ireland, in earth the supreme head.*" And the same are enacted to be and continue for ever united and annexed to the imperial crown of this realm. Which last words [of the church of *England*, and also of *Ireland*, in earth the supreme head], are what seem to be understood in the abbreviated style of the king,

as it is now commonly expressed, "defender of the faith, and so forth."

By one of the acts of settlement of the crown at the revolution, 1 W. c. 6. it is required, that every king or queen who shall succeed to the imperial crown of this realm, shall, at their respective coronation, take the following oath, to be administered by one of the archbishops or bishops.

The archbishop shall say, *Will you solemnly promise and swear, to govern the people of the kingdom of England and the dominions thereunto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same?* The king shall say, *I solemnly promise so to do.*

Archbishop: *Will you, to your power, cause law and justice in mercy to be executed in all your judgments?* The king shall answer, *I will.*

Archbishop: *Will you, to the utmost of your power, maintain the laws of God, the true profession of the gospel, and protestant reformed religion, established by law? And will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges, as by law do or shall appertain to them, or any of them?* The king shall answer, *All this I promise to do.* After this, laying his hand upon the holy gospels, he shall say, *The things which I have here before promised, I will perform and keep; So help me God: and shall then kiss the book.*

And by 1 W. sess. 2. c. 2. Whereas the late king James the second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom;

1. By assuming and exercising a power of dispensing with, and suspending of laws, and the execution of laws, without consent of parliament:

2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power:

3. By issuing and causing to be executed a commission under the great seal, for erecting a court called, *The court of commissioners for ecclesiastical causes:*

4. By levying money for, and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by parliament:

5. By

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law:

6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law:

7. By violating the freedom of election of members to serve in parliament:

8. By prosecutions in the court of king's bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses:

9. And whereas of late years, partial, corrupt, and unqualified persons have been returned and served on juries in trials, and, particularly, divers jurors in trials for high treason, which were not freeholders:

10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects:

11. And excessive fines have been imposed, and illegal and cruel punishments inflicted:

12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied:

All which, are utterly contrary to the known law, statutes, and freedom of this realm:

Therefore, the lords spiritual and temporal, and commons, in parliament assembled, do, for vindicating their ancient rights and liberties, declare,

1. That the pretended power of suspending laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

4. That levying money for, or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal.

5. That it is the right of the subjects to petition the king; and all commitments and prosecutions for such petitioning, are illegal.



6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That the subjects, which are protestants, may have arms for their defence, suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

9. That freedom of speech, and debates or pleadings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason, ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that, for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties.

By the articles of the union of the two kingdoms of *England* and *Scotland*, all papists, and persons marrying papists, are for ever excluded from the imperial crown of *Great Britain*; and, in such case, the crown shall descend to such person being a protestant, as should have inherited the same, in case such papist, or person marrying a papist, were naturally dead. 5 *An. c. 8.*

**KING's BENCH**, is the supreme court of common law in the kingdom; and is so called because the king used formerly to sit there in person, the style of the court being still *before the king himself*. It consists of a chief justice, and three other judges, who are, by their office, the principal coroners and conservators of the peace. 3 *Black. 41.*

This court keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress below.

below. It superintends all civil corporations in the kingdom: it commands magistrates and others to do what their duty requires, in every case where there is no specific remedy: it protects the liberty of the subject, by speedy and summary interposition: it takes cognizance both of criminal and civil causes; the former, in what is called the crown side or crown office; the latter, in the plea side of the court. *Id.* 42.

On the plea side, it hath cognizance in all pleas by bill, for debt, detainue, covenant, account, and of all actions on the case, either upon promises, scandalous words, special nuisances, trover, and conversion, on penal statutes, and all other personal actions, against any person supposed to be in the custody of the marshal, as every one sued here is supposed to be. *Wood. b. 4, c. 1.*

The crown side takes cognizance of all treasons, felonies, misdemeanors tending to the breach of the peace, or oppression of the subject; and of all causes prosecuted by way of indictment, inquisition, or information. Into this office, indictments from all inferior courts may be removed by certiorari. Inquisitions of *felo de se*, and of homicide by misadventure, are certified hither of course. Hence also issue attachments for disobeying rules or orders. *Id.*

It is also a court of appeal; into which may be removed, by writ of error, all determinations of the court of common pleas, and of all inferior courts of record in *England*; and to which a writ of error lies also from the court of king's bench in *Ireland*: and from this court lies an appeal by writ of error into the house of lords, or the court of exchequer chamber, as the case may happen, according to the nature of the suit, and the manner in which it has been prosecuted. 3 *Black.* 43.

KING's SILVER, otherwise called a *post-fine*, is a sum of money paid to the king in the court of common pleas, for a licence granted to levy a fine of lands, tenements, or hereditaments; and this must be compounded for at the rate of ten shillings for every five marks of land; that is, three twentieth parts of the supposed annual value.

KNAVE, *Sax.* anciently a servant; as *scildknapa*, the servant who carried the knight's shield; his esquire, or armour bearer.

**KNIGHT**, is the next personal dignity after the nobility. Of knights there are several orders and degrees: the first in rank of precedence, are knights of the *garter*; instituted by king *Ed.* 3. in the year 1344. Next follows a knight *banneret*, who, by some statutes, is ranked next after barons; and his precedence, before the younger sons of viscounts, was confirmed to him by order of king *James* the first, in the tenth year of his reign: but in order to intitle himself to this rank, he must have been created by the king in person in the field, under the royal banner, in time of open war; otherwise, he ranks after *baronets*, who are next in order of precedency. Next follow knights of the *bath*, instituted by king *Hen.* 4. and revived by king *George* the first: they are so called from the ceremony of *bathing*, the night before their creation. The last order are knights *bachelors*, who though they are the lowest, yet are the most ancient order of knight-hood; for we have an instance of king *Alfred's* conferring this order on his son *Athelstan.* 1 *Black.* 403. These are sometimes called knights of the *chamber*, being such as are made in time of peace, and so called because knighted in the king's chamber, and not in the field. 2 *Inst.* 666.

Knights are in Latin called *equites aurati*: *aurati*, from the gilt spurs they wore; and *equites*, because they always served on horseback.

They are also in our law called *milites*, because they formed a part, or indeed the whole, of the royal army, in virtue of their feudal tenures. 1 *Black.* 404.

**KNIGHT's FEE**, was anciently so much inheritance in land, as was sufficient to maintain a knight; which, in the reign of king *Hen.* 2. being estimated at 20 *l.* a year, may, by the continual decrease in the value of money, be now reckoned at about 400 *l.* a year. Every man possessed of such estate was obliged to be knighted, and attend the king in his wars, or pay a pecuniary sum in lieu thereof, called *escuage*.

**KNIGHT's SERVICE.** Upon the *Norman* conquest, all the lands in the kingdom were divided into knight's fees, in number above 60,000. And for every knight's fee, a knight (*miles*), or soldier, was bound to attend the king in his wars for 40 days in a year; in which space of time, before war was reduced to a science, the campaign was generally finished, and a kingdom either conquered or victorious.

rious. By this means the king had, without any expence, an army of 60,000 men always ready at his command. If a man held only half a knight's fee, he was only bound to attend 20 days, and so in proportion.

This tenure by knight's service drew after it, aids, relief, primer seisin, wardship, marriage, fines for alienation, and escheat.

But this personal service in process of time degenerated into pecuniary commutations or aids; and, at last, the military part of the feudal system was abolished at the restoration, by the statute of 12 C. 2. c. 24. 1 *Black.* 410. 2 *Black.* 62.

**KNIGHTS HOSPITALLERS**, were an order of knights that had their name from an *hospital* erected at *Jerusalem*, for the use of pilgrims coming to the holy land, and dedicated to *St. John Baptist*. They were afterwards called *knights of St. John of Jerusalem*. Their first business was to provide for and protect such pilgrims as came to that hospital. Afterwards, being driven out of the holy land, they settled chiefly at *Rhodes*; and were there called *knights of Rhodes*; and, after the loss of *Rhodes*, they came to *Malta*, where they now reside, and are therefore called *knights of Malta*. Divers of them came into *England* in the year 1100; and, in process of time, they obtained so great wealth, and honours, and exemptions, that their superior was the first lay baron, and had a seat amongst the lords in parliament.

**KNIGHTS OF THE SHIRE**, were so called because anciently they were to be real knights; and still the form of the writ runs, that they be knights girt with the sword. But now, by several statutes, notable esquires may be chosen; and their qualification is to be determined according to the value of the estate, which is not to be less than 600*l.* a year.

**KNIGHTS OF THE THISTLE**, are an order of knights in *Scotland*; who wear a green ribbon over their shoulders, and are otherwise honourably distinguished.

**KNIGHTS TEMPLARS**, were instituted in the year 1118, and were so called from having their first residence in some apartments adjoining to the temple at *Jerusalem*. Their employment was to guard the roads for the security of pilgrims



grims in the holy land. They came into *England* pretty early in the reign of king *Stephen*; and increased so much in wealth, that they were thought dangerous, and too powerful: and in the year 1312, that order was dissolved.

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## L A C

**L**ABEL, is a narrow slip of paper or parchment, affixed to a deed or writing hanging at or out of the same; and an appending seal is called a label. And in heraldry it is the badge of the eldest house or branch of a family.

**LABOUR**, is the foundation of property. *Bodily labour*, bestowed upon any subject which before lay in common to all men, is universally allowed to give the fairest and most reasonable title to an exclusive property therein. 2 *Black.* 5.

**LACE**. By 3 *G. 3. c. 21.* & 5 *G. 3. c. 48.* no person shall import any lace, not made in *Great Britain*, on pain of 200 *l.*, and forfeiture of the same, which may be seized by the officers of the customs; and persons in whose custody the same shall be found, or who shall sell or expose the same to sale, or conceal with intent to prevent the forfeiture thereof, shall be subject to the like penalty. And by 19 *G. 3. c. 49.* disputes between masters and their workmen in the bone and thread lace manufacture, may be determined by one justice of the peace.

**LACHES**, from the French *lascher*, *laxare*, or *lasche*, *ignavus*, idle; in our law signifies slackness, or negligence; and probably it may be an old English word; for when we say there is *laches of entry*, it is all one as if it were said, there is a *lack* of entry; and in this signification it is used in 1 *Inst.* 146. *Litt. f.* 136.

In the king there can be no laches or negligence, and therefore no delay will bar his right. 1 *Black.* 247.

No laches shall be adjudged in the heir within age; and regularly laches shall not bar either infants, or females covert, for not entry or claim, to avoid descents: but laches shall be accounted

accounted in them for non-performance of a condition annexed to the state of the land. 1 *Inst.* 146.

LAGA, *Sax.* law: so *lagbday*, a law day, or day when the courts are open. *Lageman*, a lawful man, as spoken of a jurymen, or witnesses.

LAGAN, is where goods are *lying* or sunk in the sea, and tied to a cork or buoy in order to be found again.

LAIRWITE, *lecherwite*, *lebergeldum*, from *lecher*, a whore-master, and *wite*, or *geld*, a tribute, was a fine anciently inflicted in the temporal courts for fornication or adultery, and paid to the king, or to the lord of the manor if recovered of his tenants in the court baron.

LAND, in legal signification, comprehends any ground, soil, or earth whatsoever; as meadows, pastures, woods, moors, waters, marshes, furze, and heath: it includes also, messuages (that is, houses), tofts (that is, places where houses once stood), mills, castles, and other buildings; for in conveying the land, the buildings pass with it. 1 *Inst.* 4.

*Water* is considered under the notion of land, in respect only of the land that lies underneath it; and may be sued for under that name, as so many acres of land covered with water. 2 *Black.* 18.

Land hath an indefinite extent, upwards as well as downwards. *Cujus est solum, ejus est usque ad cælum*, is the maxim of the law, upwards; therefore no man may erect any building or the like, to overhang another's land: and downwards, whatever is in a direct line between the surface of any land, and the center of the earth, belongs to the owner of the surface, as is every day's experience in the mining countries. So that the word *land* includes not only the face of the earth, but every thing under it, or over it, *Id.*

LANDLORD and tenant. See DISTRESS.

LAND TAX hath succeeded into the place of the ancient fifteenths and subsidies; and the annual land tax acts are framed in many respects after the manner of the ancient subsidy acts.

We meet with the payment of *fifteenths* as far back as the statute of *magna charta*; in the conclusion whereof, the parliament

parliament grants to the king, for the concessions by him therein made, a fifteenth part of all their moveable goods.

This taxation was originally set upon the several *individuals*. Afterwards, to wit, in the eighth year of *Edward* the third, a certain sum was rated upon every town, by commissioners appointed in the chancery for that purpose, in like manner as commissioners are now appointed by the several land tax acts for carrying the said acts into execution; which commissioners rated every town at the fifteenth part of the value thereof at that time, and their taxation was recorded in the exchequer; and the inhabitants rated themselves proportionably for their several parts, to make up the general sum upon the whole township. This fifteenth amounted in the whole to 29,000*l.* or near thereabouts.

But as the necessities of government multiplied, and the values of things increased, this fifteenth was insufficient for the occasions of the public; and thereupon the number of fifteenths was augmented to two or three fifteenths. Which still proving defective, another and quite different taxation was superadded, namely, the *subsidy*; which was an aid to be levied of every subject of his lands or goods, after the rate of 4*s.* in the pound for lands, and 2*s.* 8*d.* for goods. And, accordingly, in the ancient subsidy acts, there is first a grant of so many *fifteenths*, and then the grant of a *subsidy*.

These *fifteenths* were certain, as hath been said, from the time of the eighth of *Edward* the third; but the *subsidy* was uncertain, and amounted anciently to about 70,000*l.*; and a subsidy of the clergy at the same time (including the monasteries) was 20,000*l.* In the 8 *Eliz.* a subsidy amounted to 120,000*l.* In the 40 *Eliz.* it was not above 78,000*l.* Afterwards it fell to 70,000*l.*; and, by reason of a loose and uncertain way of assessing the same, kept continually decreasing, until the parliament found it necessary to change the method of taxation; and, in the time of the long parliament, certain sums were fixed upon the several counties; which course of taxation still continues.

LAPSE, *lapsus*, is a slip or departure of the right of presenting to a void benefice, from the original patron neglecting to present within six months next after the avoidance. Whence it is commonly said that such benefice is in lapse, or lapsed, whereunto he that ought to present hath  
omitted

omitted or slipped his opportunity. And, in such case, the patronage doth devolve from the patron to the bishop, from the bishop to the archbishop, and from the archbishop to the king.

The term or space in which title by lapse accrues successively is six months; which, being of ecclesiastical cognizance, is to be computed, by the kalendar, at one half year, and not accounting twenty-eight days to the month; and the day on which the church becomes void, is not to be taken into the account. 2 *Inft.* 360.

If the bishop be both patron and ordinary, he shall not have a double time allowed him to collate in: and if, upon lapse, the bishop doth not immediately collate his clerk, and the patron presents, though after the six months are lapsed, yet his presentation is good, and the bishop is bound to institute the patron's clerk. So if the bishop suffers the presentation to lapse to the archbishop, the patron has the same advantage, if he presents before the archbishop hath filled up the benefice. 2 *Black.* 277.

If the benefice becomes void by death, or cession through plurality of benefices, the patron is bound to take notice at his peril; for these are matters of equal notoriety to the patron and ordinary: but in case of a vacancy by resignation, or canonical deprivation, or if a clerk presented be refused for insufficiency, these being matters of which the bishop alone is presumed to be cognizant, here the law requires him to give notice thereof to the patron, otherwise he cannot take advantage of the lapse. 2 *Black.* 278.

There is no lapse from the king; and therefore if the king neglect to fill up the vacancy, there is no remedy but by the ordinary sequestering the profits of the church, and appointing a clerk to serve the cure. *Gibf.* 770.

A donative doth not go in lapse; but the ordinary may compel the patron by ecclesiastical censures to fill up the vacancy. But if the donative hath been augmented by the governors of queen *Anne's* bounty, it will lapse in like manner as presentative livings.

**LAPSED LEGACY**, is where the legatee dies before the testator; or where a legacy is given upon a future contingency, and the legatee dies before the contingency happens. As if a legacy be given to a person when he attains the age of twenty-one years, and the legatee dies before that age; in this case, the legacy is a lost or lapsed legacy,  
and



and shall sink into the residuum of the personal estate.  
2 *Black.* 513.

**LARCENY**, *latrocinium*, is the felonious and fraudulent taking away of the personal goods of another; which goods, if they are above the value of 12 *d.* it is called *grand larceny*; if of that value, or under, it is *petit larceny*: which two species are distinguished in their punishment, but not otherwise. 4 *Black.* 229.

To make the offence felony, there must be a *felonious intention*; and therefore it shall not be imputed to a mere mistake or misanimadversion; as where a person breaks open a door, in order to execute a warrant, which will not justify such a proceeding, for in such case, there is no felonious intention; for it is the mind that makes the taking of another's goods to be felony, or a bare trespass only. The most common discovery of a felonious intent, is where the party doth it secretly, or being charged with the fact, denies it: but this is not the only criterion of criminality; for in cases that may amount to larceny, the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to recount all those which may evidence a felonious intent; therefore they must be left to the due and attentive consideration of the court and jury. 1 *H. H.* 509.

And as there must be a *felonious intention*, so also there must be an *actual taking*; for all felony includes trespass: from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. And from this ground it hath been holden, that one who finds the goods which I have lost, and converts them to his own use, with intent to steal them, is no felon; and much more one who has the actual possession of my goods by my delivery for a special purpose, as a carrier who receives them in order to carry them to a certain place; or a taylor who has them in order to make me a suit of cloaths; or a friend who is intrusted with them to keep for my use: these cannot be said to steal them by embezzling them afterwards. But if a carrier opens a pack, and takes out part of the goods, or a weaver who has received yarn to work, or a miller who has corn to grind, take out part thereof with intent to steal it, it is felony. 1 *Haw.* 89.

And there must be not only a *taking*, but also a *carrying away*. But to make it come within this description, any the

least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off. And upon this ground, the guest, who having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny: so also was he, who having taken an horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. 1 *Haw.* 93.

Also this felonious taking and carrying away must be of the *personal* goods of another. For if they favour any thing of the realty, it cannot be larceny by the common law: and therefore they ought not to be any way annexed to the freehold: therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold; as wood cut, grass in cocks, stones dug out of the quarry, and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 *Haw.* 93. But by special statutes, many things belonging to the freehold, being not merely personal goods, are brought within the offence of larceny, and made felony without benefit of clergy.

The law which fixes the boundary between grand and petty larceny, making it capital to steal above the value of 12 *d.* is as ancient as the reign of king *Edward* the first, at which time the sum of 12 *d.* in silver, was equal to 3 *s.* of our present money weight, and equal to 40 *s.* or more, in the value of any thing to be purchased by it. And therefore, juries are usually instructed by the court to find the value, not according to the strict nominal value as it is with us at this day, but reasonably according to the ancient standard.

**LARDARIUM**, the larder or place where the lard or meat were kept. The tenants of several manors were bound to carry salt or other provisions from the place where they were purchased to the lord's larder. And *lardarium* seems to have been a rent paid by way of commuting for the said service. *Lardarius regis*, was the king's larderer, or clerk of the kitchen.

LASTAGE,

**LASTAGE**, a custom or duty for goods in a market or fair, sold by the *last*; as corn, wool, herrings, and such like.

**LATHE**, *leda*, *leth*, (Sax. *lathe*,) is a large part of a county, being an intermediate division between a shire and an hundred, containing (as in *Kent*) about three or four hundreds. In some of the ancient grants of immunities, was freedom from suit to the county, læth, and hundred courts; which *latb* court is probably no other than what is now, with a very little variation, called the *court leet*.

**LATITAT**, is a writ whereby a man is originally called to answer in a personal action in the king's bench; having its name upon a supposition that the defendant doth lurk and *lie hid*, and cannot be found in the county of *Middlesex* (in which the said court is holden), to be taken there, but is gone into some other county, and therefore requiring the sheriff to apprehend him in such other county. *F. N. B.* 78.

**LATROCINUM**. An immunity *de latrocino* was a privilege of non-attendance at the courts which had sole jurisdiction of robbery within such district.

**LAVATORIUM**, a laundry or place to wash in; applied to such a place in the porch or entrance of cathedral churches, where the priests and other officiating members were to wash their hands, before they proceeded to the divine service.

**LAUNDE**, a *lawn*, or open field without wood.

**LAW**, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the law of nature and of nations. And it is a rule of action, which is prescribed by some superior, and which the inferior is bound to obey. 1 *Black.* 38.

**LAW**

**LAWING** of dogs, is the cutting off the claws of the fore-feet of dogs in the king's forests, to prevent them from courting and taking the deer.

**LAW PROCEEDINGS** of all kinds, are to be in the English language, 4 G. 2. c. 26. 5 G. 2. c. 27. Except known abbreviations and technical terms. 6 G. 2. c. 14.

**LAW SPIRITUAL**, *lex spiritualis*, is the *ecclesiastical law*, allowed by our laws where it is not against the common law, nor the statutes and customs of the kingdom; and, regularly, according to such ecclesiastical or spiritual laws, the bishops, and other ecclesiastical judges, proceed in causes within their cognizance. *Co. Litt.* 344.

**LAWYER**, is a counsellor, or one learned in the law.

**LAZARET**, a place appointed wherein quarantine is to be performed by vessels and persons coming from infected countries.

#### LEASES.

1. *Of leases in general, by the common law.*
2. *Of leases of bodies corporate and others, by statute.*

##### 1. *Of leases in general, by the common law.*

1. A lease is properly a conveyance of any lands or tenements, (usually in consideration of rent, or other annual recompence,) made for life, for years, or at will; but always for a less time than the lessor hath in the premises: for if it be for the whole interest, it is more properly an assignment than a lease. 2 *Black.* 317.

2. In all leases there must be a lessor and lessee. He that demises or lets to farm, is the lessor (vulgarly called the landlord); and he unto whom it is demised or let, is the lessee, commonly called the tenant. *Wood. b. 2. c. 3.*

3. By the statute of frauds, 29 C. 2. c. 3. all interests of freehold, or terms for years, not put in writing, and signed by the parties, or their agents authorized in writing, shall have no greater effect than as estates at will; except leases not exceeding three years from the making; whereof the rent reserved shall be two thirds of the value of the thing demised.

4. The words to make a lease are; *demise, grant, and to farm let.* 1 *Inst.* 45.



5. Regularly, in every lease for years, the term must have a certain beginning, and a certain end. But although there appear no certainty of years in the lease, yet if by reference it may be made certain, it sufficeth: as if *A.* lease his land to *B.* for so many years as *B.* hath in the manor of *Dale*, and *B.* hath then a term in the manor of *Dale* for ten years; this is a good lease by *A.* to *B.* of the land of *A.* for ten years. *Ibid.*

So if a man make a lease for twenty-one years, if such an one so long live, this is a good lease for years, although the life is uncertain. *Ibid.*

But if a parson make a lease of his glebe, for so many years as he shall be parson there, this cannot be made certain by any means: for nothing is more uncertain than the time of death. But if he make a lease for three years, and so from three years to three years, so long as he shall be parson, this is a good lease for six years, if he continue parson so long; first for three years, and after that for three years, and for the residue uncertain. *Ibid.*

6. If a lease be made, bearing date (for instance) the 26th of *May*, to have and to hold for twenty-one years from the date, or from the day of the date, it shall begin on the 27th day of *May*; but if it be to have and to hold from the making thereof, or from thenceforth, it shall begin on the day on which it is delivered; for the words of the lease are not of any effect till the delivery. 1 *Inst.* 46.

So if the habendum be for the term of twenty-one years, without mentioning when it shall begin, it shall begin from the delivery, for there the words take effect. *Ibid.*

If the indenture of lease bear a date which is impossible, as on the 30th of *February*; if in this case the term be limited to begin from the date, it shall begin from the delivery, as if there had been no date at all. *Ibid.*

7. If a man reserve a rent generally, without shewing to whom it shall go, the same shall go to his heirs, because they have the reversion. 1 *Inst.* 47.

Yea, if he reserve a rent to him and his executors, yet his executors shall not have it, but it shall end by his death; for the rent is incident to the reversion. *Ibid.*

So if the rent be reserved to the lessor, his heirs and assigns, then shall all the assigns of the reversion enjoy the same. *Ibid.*

8. In a lease for years, there needs no livery of seisin to be made to the lessee; but he may enter when he will by force

force of the same lease. But in a lease for life, whereby a freehold passeth, there must be livery of seisin. *Litt. f. 59.*

2. *Of leases of bodies corporate and others, by statute.*

By the common law, many persons might make leases for years, or for life or lives, at their will and pleasure, which now cannot make them firm in law. And some persons may now make leases for years, or for life or lives, (observing due incidents,) firm and good in law, which by the common law they could not do. And this, by virtue of divers acts of parliament, one of which is called the *enabling*, and the rest *disabling*, or restrictive, statutes. *1 Inst. 44.*

Before these statutes, bishops, with confirmation of the dean and chapter, master and fellows of any college, deans and chapter, master or guardian of any hospital and his brethren, parson or vicar, with consent of the patron and ordinary, archdeacon, prebendary, or any other body politic, spiritual and ecclesiastical, observing the proper requisites, might have made leases for lives or years, without limitation or stint. And so might they have made gifts in tail, or estates in fee, at their will and pleasure; whereupon great decay of divine service and other inconveniences ensued; and therefore they were disabled and restrained by the said acts to make any such estate or conveyance. But there are excepted out of the said acts, leases for three lives or twenty-one years, under divers provisions and limitations. For at this day, there are three kinds of persons who may make leases for three lives or twenty-one years, viz. First, any person seised of an estate tail in his own right. Secondly, any person seised of an estate in fee simple, in right of his church. Thirdly, any husband and wife seised of any estate of inheritance in fee simple in the wife's right, or jointly with her. *Ibid.*

All these are made good by the statute of 32 H. 8. c. 28. which enableth them thereunto, and is therefore called the *enabling* statute. But to the making good of such leases by the said statute, several things are necessarily to be observed: As, 1. The lease must be by indenture; and not by deed poll, or by parol. 2. It must begin from the making, or day of the making, and not at any greater distance of time. 3. If there be any old lease in being, it must be first absolutely surrendered, or be within a year of expiring. 4. It must be either for twenty-one years, or three lives; and not for both. 5. It must not exceed the term of three lives, or twenty-one years, but may be for a shorter term. 6. It must be of lands and tene-

ments most commonly letten for twenty years last past; so that if they have been let for above half the time (as eleven years out of the twenty), either for life, for years, at will, or by copy of court roll, it is sufficient. 7. The most usual and customary rent, for twenty years past, must be reserved yearly on such lease. 8. Such leases must not be made without impeachment of waste. 2 *Black.* 319.

But a parson and vicar are excepted out of this statute, and therefore as to this matter they continue as they were before; and, consequently, if either of them make a lease for three lives, or twenty-one years, it must also be confirmed by patron and ordinary. 1 *Inst.* 44.

Next follows the *disabling* statute, 1 *El. c.* 19. (made for the benefit of the successor,) which enacts, that all grants, by archbishops and bishops (including even those confirmed by the dean and chapter), other than for the term of twenty-one years or three lives from the making, or without reserving the usual rent, shall be void. But concurrent leases, if confirmed by the dean and chapter, are held to be valid within this statute, provided they do not exceed (together with the lease in being) the term permitted by the act. 2 *Black.* 320.

Next comes the statute 13 *El. c.* 10. explained and enforced by the 14 *El. c.* 11 & 14. 18 *El. c.* 11. and 43 *El. c.* 29. which extend the restrictions laid by the 1 *El. c.* 19. on bishops, to certain other inferior corporations, both sole and aggregate. From laying all which together, we may collect, that all colleges, cathedrals, and other ecclesiastical or eleemosynary corporations, and all parsons and vicars, are restrained from making any leases of their lands, unless under the following regulations: 1. They must not exceed twenty-one years, or three lives, from the making. 2. The customary rent, or more, must be yearly reserved thereon. 3. Houses in corporations, or market towns, may be let for forty years, provided the lessee be bound to keep them in repair. 4. Where there is an old lease in being, no concurrent lease shall be made, unless where the old one will expire within three years. 5. No lease shall be made without impeachment of waste. *Ibid.*

Concerning these restrictive statutes, there are two observations to be made. First, that they do not, by any construction, enable any persons to make such leases as they were by common law disabled to make: therefore, a parson or vicar, though he is restrained from making longer leases than for twenty-one years, or three lives, even *with* the consent of patron and ordinary, yet is not enabled to make any lease at all, so as to bind his successor, *without* obtaining such consent. Secondly, that  
though

though leases contrary to these acts are declared void, yet they are good against the *lessor* during his life, if he be a sole corporation; and are also good against an aggregate corporation so long as the head of it lives, who is presumed to be the most concerned in interest; for the act was intended for the benefit of the successor only; and no man shall make an advantage of his own wrong. *Ibid.*

With regard to college leases, by the 18 *El. c. 6.* one third of the old rent shall be reserved in wheat at 6s. 8d. a quarter, or malt at 5s.; or the lessees shall pay for the same according to the price that wheat and malt shall be sold for, in the market next adjoining to the respective colleges, on the market day before the rent becomes due.

By several statutes, if any beneficed clergyman be absent from his cure above eighty days in any one year, all leases made by him of the profits of such benefice shall be void except in the case of licensed pluralists, who may demise the living on which they are non-resident to their curates only. 2 *Black.* 322.

LEASE AND RELEASE, is a conveyance of right or interest in lands or tenements, which in law amounts to a feoffment. 1 *Inst.* 207.

It was invented to supply the place of livery of seisin, and is thus contrived: A *lease*, or rather bargain and sale, upon some pecuniary consideration, for one year, is made by the tenant of the freehold to the lessee or purchaser, which vests in the said purchaser the use of the term for a year; and then the statute of uses, 27 *H. 8. c. 10.* immediately transfers the uses into possession. He, therefore, being thus in possession, is capable of receiving a *release* of the freehold and reversion; and, accordingly, the next day, a release is granted to him. 2 *Black.* 339.

In the lease for a year, or any such term, there must be the words *bargain and sell* for money; and five shillings, or any other sum, though never paid, is a good consideration, whereupon the lessee or bargainee is immediately in possession without actual entry. If only the words *demise, grant, and to farm let*, are used, in that case the lessee cannot accept a release of the inheritance, until he hath actually entered, and is in possession. 2 *Lill. Abr.* 435.

LEATHER. By several statutes, regulations are made for the tanning and manufacturing of leather; and by the



27 G. 3. c. 13. a duty is laid upon all hides and skins imported, and drawbacks allowed on the exportation thereof. And also several duties are imposed on hides and skins tanned in *Great Britain*, of what kind soever, as set forth in schedules annexed to the said act. And by the 28 G. 3. c. 37. further regulations are made respecting the said duties, which are to be under the management of the officers of excise.

**LECHERWITE**, *lairwite*, a fine on *lechers*; that is, on fornicators, or adulterers; which was anciently assessed in the temporal courts, and paid to the king.

**LECTURERS**, in several churches in *London* and other places, are appointed as assistants to the rectors or vicars. They are commonly chosen by the vestry, or chief inhabitants, and are usually the afternoon preachers. There are also one or more lecturers in most of the cathedral churches; and many lectureships have likewise been founded by the donation of private persons.

By the act of uniformity, 13 & 14 C. 2. c. 4. lecturers are to be licensed by the ordinary; and every lecturer, upon the first lecture day in every month, shall, before his lecture, read the common prayers and service for that day, on pain of being disabled: and if he shall preach any lecture during such disability, he shall suffer three months imprisonment in the common gaol.

**LEET** (*leth, lathe, lathe*,) is of *Saxon* original, and seemeth to be no other than the court of the *lathe*, as the county court is that of the *county*. For in ancient times, the counties were subdivided into lathes, rapes, wapentakes, hundreds, and the like. And the sheriff twice a year performed his *tourn*, or perambulation, for the execution of justice throughout the county. Afterwards, this power of holding courts was granted to divers great men within certain districts. And from hence these courts, holden within particular parts of the county, have descended unto us without variation, under the name of the *leet, leth, or lathe* courts.

The court leet is a court of record, having the same jurisdiction within a particular precinct, which the sheriff's *tourn* hath in the county.

For the leet, or view of frankpledge, was by the king, for the ease of the people, divided and derived from the *tourn*; who did grant to the lords, to have the view of the tenants  
and

and resiants within their manors, so as that they should have the same justice that they had before in the tourn, done unto them at their own doors, without any charge or loss of time.

2 *Inst.* 71.

The intention hereof for keeping the king's peace was, that every freeman at his age of twelve years, (except peers, clergymen, and tenants in ancient demesne,) should in the leet, if he were in any leet, take the oath of allegiance to the king; and that pledges or sureties should be found for his truth to the king, and to all his people, or else to be kept in prison. *Id.* 73.

It is not necessary, that a juryman in the leet should have any qualification by estate, but any person happening to be present, or riding by the place where it is holden, may, for want of jurors, be compelled by the steward to be sworn. 2 *Haw.* 69.

The constables of common right are to be chosen and sworn in the leet or tourn. *Id.* 62.

A court leet is so far intrusted with the keeping of the peace within its own precinct, that the steward of it may by recognizance bind any person to the peace who shall make an affray in his presence, sitting the court; or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him, in which case he may afterwards impose a fine according to his discretion. 2 *Haw.* 4.

This court hath cognizance of a great number of offences, both by the common law, and by statute; as, for instance, tippling in alehouses; assaults, whereby bloodshed ensues; bakers; common barators; bawdy houses; destroyers of ancient boundaries; brewers; butchers; estrays, waifs, and treasure trove; hedge breakers; neglecters of hue and cry; innholders; millers; common nuisances; want of stocks and common pound; neglecting watch and ward; and many others by particular statutes. *Wood. b. 4. c. 1.*

The lord of the leet ought to have a pillory and tumbrel; and for want thereof, he may be fined and his liberty seized. But the stocks are to be provided at the charge of the town. *Id.*

The lord of common right may distrain for a fine or amercement in the leet, and may sell the distress, but he cannot imprison for it; and this is the only court that can fine and not imprison. *Id.*

The jurors in the leet may receive indictments of felony, but they cannot hear and determine them, but must send them to the gaol delivery, if the offenders be in custody; or remove

them by certiorari into the king's bench, that process may be made upon them to outlawry. 2 *Hale's Hist.* 71.

But the business of the leet hath declined for many years, and is now mostly devolved on the quarter sessions.

### LEGACY.

1. *Legacy, what.*
2. *Lapsed legacy.*
3. *Legacy, how recoverable.*
4. *In what case to bear interest.*
5. *Abatement on deficiency of assets.*
6. *Payment to a feme covert.*
7. *Child's legacy in the hands of the parent.*

1. *Legacy, what.* A legacy is a bequest or gift of goods and chattels by testament; and the person to whom it is given is styled the *legatee*, or sometimes the *legatary*. There is also a *residuary legatee*, who is the person to whom the surplus or *residue* of the estate is given, after payment of the debts and particular legacies.

2. *Lapsed legacy.* If the legatee dies before the testator, the legacy is a lost or lapsed legacy, and shall sink into the *residuum*; inasmuch, that if the testator by his will bequeath his lands and tenements to a person *and his heirs*, yet if such person die before the testator, his *heirs* shall not recover the land, because the devisee was not in being when the will should take effect. *Savin.* 35. 560.

If the legatary *survive* the testator, and die before the legacy becomes due, the legacy shall lapse or not lapse according to the special designation by the words of the will. If the legacy be given to one generally, *to be paid* or *payable* at the age of twenty-one, or any other age, this is such an interest vested in the legatee, that his executor or administrator may sue for and recover it; for it is *debitum in presenti*, though *solvendum in futuro*, the time being annexed to the payment, and not to the legacy itself: so if the legacy be made to carry *interest*, though the words, *to be paid*, or *payable*, be omitted, it shall be an interest vested. But if a legacy be given to one *at* twenty-one, or *if* or *when* he shall attain the age of twenty-one, and the legatee dies before he attains that age, the legacy is lapsed. So where the legacy is to arise out of a real estate; this shall not go to the representative of the legatee, but shall sink in the inheritance for the benefit of the heir, as much as if it was a portion provided by a marriage settlement. *Law of Te.* 242.

3. *Legacy,*

3. *Legacy, how recoverable.* The legatary may not take the goods without the executor's consent; for it may be, the executor hath not assets besides to pay the testator's debts. But in case of a devise of lands, the devisee may enter without the assent of the executor; and if the heir at law shall enter before him, the devisee may enter and eject him. *1 Inst. 111.*

An action at law doth not lie against an executor for a legacy, unless he promise to pay it upon good consideration; for legacies are only to be recovered in the spiritual court, or in the courts of equity. *T. L.*

But if the legacy is payable out of the land, or out of the profits of the land, an action on the case lies at common law. *Sid. 44. 3 Salk. 223.* And a legatee may maintain an action of debt at common law against the owner of the land, out of which the legacy is to be paid; and since the statute of wills gives him a right, by consequence he shall have an action at law to recover it. *2 Salk. 415.*

4. *In what case to bear interest.* Where a legacy is bequeathed to be paid divers years after the testator's death, this difference is to be observed: if the day were given in favour of the legatee, being an infant, who could not safely receive it any sooner, then he shall have the profit; but if the respite was in favour of the executor, then the legatee shall have the bare legacy without interest. *Wentw. Exec. 352.*

More particularly, 1. If one gives a legacy charged upon land, which yields rents and profits, and there is no time of payment mentioned in the will, the legacy shall carry interest from the testator's death, because the land yields profits from that time. 2. But if a legacy be given out of a personal estate, and no time of payment mentioned in the will, this legacy shall carry interest only from a year after the death of the testator. 3. If a legacy be given, charged upon a dry reversion, it shall carry interest only from a year after the death of the testator, a year being a convenient time for sale. 4. If a legacy be given out of a personal estate, consisting of mortgages carrying interest, or of stocks yielding profits half yearly; it seems in this case the legacy shall carry interest from the death of the testator. 5. If a legacy be paid into court, and the legatee hath notice of it, so that it is his fault not to pray to have the money, or that the money should be put out, the legatee in such case shall lose the interest from the time that the money was brought into court; but if the money was put out, the legatee shall have the interest, which the money put out by the court did yield. *2 P. Will. 26.*

5. *Abatement on deficiency of assets.* In case of a deficiency of assets, all the general legatees must abate proportionably,  
in



in order to pay the debts; but a specific legatee (of a piece of plate, a horse, or the like) is not to abate at all, or allow any thing by way of abatement, unless there be not sufficient without it. In like manner, if the legatees have been paid their legacies, they are afterwards bound to refund a rateable part, in case debts come in, more than sufficient to exhaust the residuum after the legacies paid. 2 *Black.* 513.

But if the executor had at first enough to pay all the legacies, and afterwards, by his wasting the assets, occasions a deficiency, the legatee who has recovered his legacy, shall have the advantage of his legal diligence, which the other legatees neglected by not bringing their suit in time. *Id.*

6. *Payment to a feme covert.* A legacy bequeathed to a feme covert to her sole and separate use is good, and may be paid to her exclusive of her husband; but if it be bequeathed to her generally, the husband shall have it; and if paid to her, the executor shall pay it over again. 1 *Vern.* 261.

7. *Child's legacy in the hands of the parent.* A legacy in the hands of the father, given to his children by a relation or other person, shall not be diminished by the father, because he is obliged to maintain his own children. 3 *Atk.* 399.

By divers late statutes, certain stamp duties are imposed on receipts for legacies, which vary in proportion to the amount of the legacies.

LEGATE, the pope's nuncio or ambassador; of whom there are three kinds: 1. *Legati a latere*; those are cardinals, sent by the pope *a latere*; that is, from his own immediate presence. 2. *Legati nati*, legates born; and of this kind was anciently the archbishop of *Canterbury*, who had a perpetual legatine power annexed to his archbishopric. 3. *Legati dati*, legates given; and these are such as have authority from the pope by special commission.

LEGITIME, was the legal portion of the wife and children out of the husband's or father's effects, which he could not devise from them by will, nor the ordinary distribute in case of intestacy, nothing remaining for the will or administration to operate upon, but what was called the *death's* (or dead-man's) part.

LETTER. By statute 9 *G. c.* 22. and 27 *G. 2. c.* 15. if any person shall send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing, or threatening to kill or mur-

der any of his majesty's subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw, he shall be guilty of felony without benefit of clergy.

And by 30 G. 2. c. 24. all persons who shall send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with intent to extort from him any money or other goods, shall be punished at the discretion of the court, by fine and imprisonment, pillory, whipping, or transportation for seven years.

**LETTER OF ATTORNEY**, is a writing of any person authorising another in his *turn* or stead to do any lawful act; as, to give seisin of lands, receive debts, or such like.

**LETTER OF CREDIT**, is where a merchant or correspondent writes a letter to another, requesting him to credit the bearer with a certain sum of money.

**LETTER OF LICENCE**, is an instrument or writing made by creditors to a man that has failed in his trade, allowing him longer time for the payment of his debts, and protecting him from arrests in going about his affairs; giving him leave to resort freely to his creditors, or to any others, and to compound debts, and such like.

**LETTER OF MARQUE**, is an authority given to make reprisals for reparation of depredations committed by the subjects of a foreign state.

**LETTERS CLOSE**, *literæ clausæ*, close letters, are grants of the king, specially distinguished from *letters patent*, in that the letters close, being not of public concern, but directed to particular persons, are closed up and sealed; whereas the letters patent, or open letters, being directed to all the king's subjects in general, are not sealed up, but left open for public inspection.

**LETTERS PATENT**, or grants of the king, are matter of public record; for no freehold may be given to the king, nor derived from him, but by matter of record. And to this end, a variety of offices are erected, communicating in a regular

regular subordination one with another, through which all the king's grants must pass, and be transcribed and enrolled, that the same may be narrowly inspected by his officers, who will inform him if any thing contained therein is improper or unlawful to be granted. Those grants, whether of lands, honours, liberties, franchises, or any thing besides, are contained in *charters* or *letters patent*; that is, open letters, *literæ patentes*; so called, because they are not sealed up, but exposed to open view, with the great seal pendant at the bottom; and are usually directed or addressed by the king to all his subjects at large. And therein they differ from certain other letters of the king, sealed also with his great seal, but directed to particular persons, and for particular purposes; which, therefore, not being proper for public inspection, are *closed* up and sealed on the outside, and are thereupon called writs *close*, *literæ clausæ*; and are recorded in the *close rolls*, in the same manner as the others are in the *patent rolls*. 2 *Black.* 346.

Grants or letters patent must first pass by *bill*, which is prepared by the attorney and solicitor general, in consequence of a warrant from the crown, and is then signed, that is, superscribed at the top, with the king's own *sign manual*, and sealed with his *privy signet*, which is always in the custody of the principal secretary of state; and then sometimes it immediately passes under the great seal, in which case the patent is subscribed in these words, *per ipsum regem*, by the king himself; otherwise the course is, to carry an extract of the bill to the keeper of the *privy seal*, who makes out a writ or warrant thereupon to the chancery, so that the sign manual is the warrant to the privy seal; and the privy seal is the warrant to the great seal: and, in this last case, the patent is subscribed *per breve de privato sigillo*, by writ of privy seal. *Id.*

But there are some grants which only pass through certain offices, as the admiralty or treasury, in consequence of a *sign manual*, without the confirmation of either the *signet*, the *great*, or the *privy seal*. *Id.* 347.

LEVANT AND COUCHANT, (*levantes et cubantes*,) is where cattle have been so long upon the ground, as they may have had time to lie down and rise up to feed; which, in general, is held to be one night at least. 3 *Black.* 9.

LEVARI FACIAS, is a writ of execution, directed to the sheriff, commanding him to *levy* the plaintiff's debt on the lands and goods of the defendant, whereby the sheriff may seize all his goods, and receive the rents and profits of his lands, till satisfaction be made to the plaintiff. 3 *Black.* 417.

But of this writ little use is now made; the remedy by a writ of *elegit*, which takes possession of the lands themselves, being much more effectual. *Id.*

LEVITICAL DEGREES, are degrees of kindred within which persons are prohibited to marry; as set forth in the eighteenth chapter of *Leviticus*.

~LEVY, *levare*, to raise; as to levy money, to levy a fine; so to erect a fence, to set up hay in cocks (*levare fœnum*).

LEWDNESS, is properly punishable in the ecclesiastical court; yet the offence of keeping a bawdy house comes also under the cognizance of the temporal law, as a common nuisance, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. 3 *Inst.* 205. 1 *Harw.* 196.

And in general, all open lewdness grossly scandalous, is punishable upon indictment at the common law. 1 *Harw.* 7.

And offenders of this kind are punishable not only by fine and imprisonment, but also by such infamous punishment as to the court in discretion shall seem proper. 1 *Harw.* 196.

In ancient times, the king's courts, and especially the leets, had power to inquire of and punish fornication and adultery; and it appeareth often in the book of Domesday, that the king had the fines assessed for those offences which were assessed in the king's courts, and could not be inflicted in the court christian. 2 *Inst.* 488.

And these fines were called *lecherwite*, *legerwite*, or *legergeldum*; *wite* and *gelt*, or *geld*, in the Saxon, signify a tribute, fine, or amercement; and *leger* importeth a bed, from *liggan* to lie down, which in divers parts of *England* is still pronounced *ligg*: and these again, as also the Gothic *ligan*, the German *ligen*, the Danish *ligge*, the Belgic *liggen*, and the Latin *lectus*, (to shew the cognation of the languages of *Europe*, and of the western *Asia*,) from the Greek word  
λεχος;



λεχος; and this again, from the Hebrew or Chaldee *lachath*, or *lecbeth*, which signify to lie down; as *lachan*, or *lechen*, in the same languages, expresseth a harlot or concubine; unto which fountain may also be referred our Anglo-Saxon word *lecher* (wherein the Saxons pronounced the *ch* hard, as the letter *χ*); as also the Latin *leccator*; and the Greek word λεχω, which denotes a woman in child-bed.

LEY, Fr. law: so also, in many places, it signifies land laid down from arable to meadow or pasture. So the termination *ley*, *lee*, *lay*, at the end of the name of a place, signifies an open field of meadow or pasture; as *Woolfley*, *Bletchingley*, *Overlay*.

LIBEL, *libellus famosus*, is a malicious defamation of any person, and especially a magistrate, made public either by printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, or ridicule. The direct tendency of these libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. 4 Black. 150.

The communication of a libel to any one person, is a publication of it in the eye of the law; and, therefore, the sending an abusive private letter to a man is as much a libel as if it were openly printed; for it equally tends to a breach of the peace. *Id.*

The punishment of a libel is either by indictment at the suit of the king, or by action on the case by the party injured, in order to obtain a satisfaction in damages.

The judgment upon an indictment is fine, and such corporal punishment as the court in its discretion shall inflict; regarding the quantity of the offence, and the quality of the offender: and in this case, it matters not whether the facts charged in the indictment be true or false; for, in a settled state of government, the party grieved ought to complain for any injury done to him, in the ordinary course of law, and not by any means to revenge himself either by libelling or otherwise: and therefore, the defendant, on an indictment for publishing a libel, is not allowed to allege the truth of it by way of justification; but in the remedy by action on the case, which is to repair the party in damages for the injury sustained, the defendant may, as in case of an action for slander, justify the truth of the facts; for if the charge be true, the plaintiff has received no private injury, and

and hath no ground to demand a compensation for himself, whatever offence it may be against the public peace; and therefore, upon a civil prosecution, the truth of the accusation may be pleaded in bar of the action. 5 Co. 125.  
4 Black. 150.

**LIBEL IN THE ECCLESIASTICAL COURT**, is the declaration or charge drawn up in writing, on the part of the plaintiff; unto which the defendant is obliged to answer.

**LIBERAM LEGEM.** In the ancient trial by battel, if either party became recreant, or yielded and submitted, he was condemned to lose his *liberam legem*; that is, to become infamous, and not be accounted *liber et legalis homo*, and never after to be put upon a jury, or admitted as a witness in any cause. 3 Black. 340.

**LIBERTIES AND FRANCHISES:** These are synonymous terms, and their definition is a royal privilege, or branch of the king's prerogative, subsisting in the hands of a subject. The kinds of them are various, and almost infinite. 2 Black. 37.

**LIBERTY**, is a privilege held by grant or prescription, by which men enjoy some benefit beyond the ordinary subject. But in a more general signification, it is said to be "a power of doing whatever the laws permit." In a state of nature, liberty consists in a power of acting as one thinks fit, without any restraint or controul, unless by the law of nature. But man, when he enters into society, finds it necessary to submit to divers restrictions and regulations of his natural liberty, for the sake of mutual assistance and defence. And these restrictions and regulations are called human laws; the obedience whereunto is infinitely more desirable than that wild and savage liberty which is sacrificed to obtain them. Political or civil liberty, therefore, is no other than natural liberty, so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public. Hence we may collect, that the law, which restrains a man from doing mischief to his fellow-citizens, though it diminishes the natural, increases the civil liberty of mankind. But every wanton and causeless restraint of the will of the subject, whether practised by a monarch, a nobility, or a popular assembly, are a degree of tyranny, and destructive of liberty.

liberty. In this kingdom, the idea and practice of political liberty hath been carried to very high perfection, and can only be lost or destroyed by the folly or demerits of those who are in possession of it; the legislature, and of course the laws of *England*, being peculiarly adapted to the preservation of this inestimable blessing, even in the meanest subject. Very different from the modern constitutions of other states on the continent of *Europe*, and from the general genius of the imperial law, which in general are calculated to vest an arbitrary and despotic power of controlling the actions of the subject, in the prince, or in a few grandees. And this spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave, or a negro, the very moment he lands in *England*, falls under the protection of the laws, and so far becomes a freeman; though the master's right to his service may possibly still continue.

The absolute rights of every Englishman (which, taken in a political and extensive sense, are usually called their liberties), as they are founded on nature and reason, so they are co-eval with our form of government, though subject at times to fluctuate and change, their establishment (excellent as it is) being still human. At some times, we have seen them depressed by overbearing and tyrannical princes; at others, so luxuriant as to tend even to anarchy, which is a worse state than tyranny itself. But the vigour of our free constitution hath always delivered the nation from these embarrassments: and, as soon as the convulsions consequent on the struggle have been over, the balance of our rights and liberties hath settled to its proper level; and their fundamental articles have been from time to time asserted in parliament, as often as they were thought to be in danger.

First, by the great charter of liberties, which was obtained, sword in hand, from king *John*, and afterwards, with some alterations, confirmed in parliament by his son king *Henry* the third: which charter contained very few new grants; but, as *Sir Edward Coke* observes, was for the most part declaratory of the principal grounds of the fundamental laws of *England*. Afterwards, by the statute called *confirmatio chartarum*, whereby the great charter is directed to be allowed as the common law; all judgments contrary to it are declared void; and sentence of excommunication to be denounced against all that by word, deed, or counsel, act contrary thereto, or in any degree infringe it. Next, by a multitude of subsequent corroboratory statutes (*Sir Edward*

*Coke*

*Coke* reckons 32) from *Ed. 1.* to *Hen. 4.* Then, after a long interval, by the *petition of right*, which was a parliamentary declaration of the liberties of the people, assented to by king *Charles* the first in the beginning of his reign; which was closely followed by the still more ample concessions made by that unhappy prince to his parliament, before the fatal rupture between them; and by the many salutary laws, particularly the *habeas corpus* act, passed under *Charles* the second. To these succeeded the *bill of rights*, or declaration delivered by the lords and commons to the prince and princess of *Orange*, *Feb. 13, 1688*, and afterwards enacted in parliament, when they became king and queen; which declaration concludes in these remarkable words; "and they do claim, demand, and "insist upon all and singular the premises, as their undoubted "rights and liberties." And the act of parliament itself recognizes them to be the true, ancient, and indubitable rights of the people of this kingdom. Lastly, these liberties were again asserted at the commencement of the present century in the *act of settlement*, whereby the crown was limited to his present majesty's illustrious house, and some new provisions added for the better securing our religion, laws, and liberties; which the statute declares to be "the birth-right of "the people of *England*, according to the ancient doctrine "of the common law." 1 *Black. 125.*

**LIBRATE**, a quantity of land, containing four bovates or oxgangs; which oxgangs were as much as one yoke of oxen could reasonably cultivate in one year.

**LICENCE**, is a power or authority given to a man to do some lawful act; and is a personal liberty to the party to whom given, which cannot be transferred over, unless it be made to a man and his assigns. 12 *Hen. 7. 25.*

There may be a parol license, as well as by deed in writing; but if it be not for a certain time, it passes no interest. 2 *Nelf. Abr. 1123.* And if there be no certain time in the licence, as if a man license another to dig clay in his land, but doth not say for how long, the licence may be countermanded; though if it be until such a time, it cannot. *Poph. 151.*

**LICENTIA CONCORDANDI**, is that licence for which the king's silver is paid on passing a fine.



**LICENTIA SURGENDI**, is a liberty or space of time given by the court to a *tenant*, to arise out of his bed who is effoined upon account of sickness (*de mala recti*) in a real action; and it is also the writ whereby the tenant obtaineth this liberty. And the law in this case is, that the tenant may not arise or go out of his chamber, until he hath been viewed by knights thereto appointed, and hath a day alligned him to appear: the reason whereof is, that it may be known whether he caused himself to be effoined deceitfully or not; and if the demandant can prove that he was seen abroad before the view or licence of the court, he shall be taken to be deceitfully effoined, and to have made default. *Bract. b. 5. Fleta. b. 6. c. 10.*

**LIEN**, is a Fench word used in our law, and signifies *binding*. A *personal lien* is a bond or covenant which affects the *person*: a *real lien* binds the lands; as a judgment, statute, or recognizance.

**LIEU**, *locus*, place; as where one thing is done in lieu, or in the place or stead of another. So *lieu connu* (*cognitus*) is a place known and certain. *Lieutenant*, (*locum tenens*), a deputy, or one that supplies the place of another.

#### LIFE ESTATES:

1. Estates for life are of two kinds; either such as are created by the act of the parties, as by deed or grant; or such as are created by operation of law, as estates by curtesy or dower. 2 *Black. 120.*

Estates for life, created by deed or grant, are where a lease is made of lands or tenements to a man, to hold for the term of his own life, or for that of any other person, or for more lives than one; in any of which cases, he is styled tenant for life; only, when he holds the estate by the life of another, he is usually called tenant *pur autre vie*; that is, for another's life. *Ibid.*

2. Estates for life may be created, not only by the express words before mentioned, but also by a general grant, without defining or limiting any specific estate. As if one grants to *A.* the manor of *Dale*, this makes him tenant for life. For though, as there are no words of inheritance, or heirs, mentioned in the grant, it cannot be construed to be a fee; it shall however be construed to be as large an estate, as the words of the donation will bear, and therefore an estate for life. Also, such a grant at large, or a grant for term of life generally, shall

shall be construed to be an estate for the life of the grantee, in case the grantor hath authority to make such grant; for an estate for a man's own life is more beneficial, and of a higher nature, than for the life of any other; and the rule of law is, that all grants are to be taken most strongly against the grantor, unless in the case of the king. 2 *Black.* 121.

3. A devise of an estate to one, without saying *and to his heirs*, shall be understood to be an estate in fee, if a sum of money is to be paid out of it; otherwise it may happen, that it shall be a prejudice to the devisee, for he may die before he shall be reimbursed out of the estate: but otherwise it is, if the charge be made payable only out of the annual profits; for then he shall not pay any thing until he hath received it. *Burr. Mansf.* 1623.

A devise of lands to one for life, and to the heirs of his body, unites the two estates, so as to make the first taker tenant in tail. But where it is to one for life, and after his death, to the issue of his body, there is no instance where it hath been so construed. 2 *Atk.* 265. 444.

4. Estates for life will, generally speaking, endure as long as the life for which they are granted: but there are some estates for life which may determine upon future contingencies before the life, for which they are created, expires; as if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these, and such like cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely determined and gone: yet, while they subsist, they are reckoned estates for life; because, the time for which they will endure being uncertain, they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen. 2 *Black.* 121.

5. The incidents to an estate for life are principally the following; which are applicable not only to that species of tenants for life, which are expressly created by deed, but also to those which are created by act and operation of law:

(1.) To every tenant for life, the law, as incident to his estate, without provision of the party, gives three kinds of estovers, viz. housebote, that is, wood for building and fuel; ploughbote, for husbandry; and haybote, for hedging. And these estovers must be reasonable. These the lessee may take upon the land demised, without any assignment, unless he be restrained by special covenant. 1 *Inst.* 41.

(2.) Tenant for life shall not be prejudiced by any sudden determination of his estate; because such determination is contingent and uncertain: therefore, if a tenant for his own life sows the land, and dies before harvest, his executors shall have the emblements or profits of the crop; for the estate was determined by the act of God. So if a man be tenant for the life of another, which other person dies after the corn is sown, the tenant for life shall have the crop. But if an estate for life be determined by the tenant's own act, as by forfeiture for waste committed, or where a tenant holds during widowhood, and marries again; in these, and similar cases, the tenants having thus determined the estate by their own acts, shall not be intitled to receive the crop. This doctrine of emblements extends not only to corn sown, but to roots planted, or other annual artificial profit. 2 *Black.* 122.

(3.) The under-tenant or lessee of an estate for life shall have the same indulgence as his lessor; and, in cases where the lessor determines the estate by his own act, yet the lessee shall not be prejudiced thereby: as in the case of a woman that holds during her widowhood, her taking husband is her own act, and therefore deprives her of the crop; but if she leases her estate to an under-tenant, who sows the land, and she then marries, this, her act, shall not deprive the tenant of his crop, who is a stranger, and could not prevent her. 2 *Black.* 123.

(4.) The lessees of tenants for life had at the common law one unreasonable advantage; for, at the death of their lessors, the tenants for life, these under-tenants might, if they pleased, quit the premises, and pay no rent to any body for the occupation of the land since the last rent day: to remedy which, it is enacted by the 11 G. 2. c. 19. that the executors or administrators of tenant for life, on whose death any lease determined, shall recover of the lessee a rateable proportion of rent, from the last day of payment to the death of such lessor.

(5.) Tenant for life is obliged to keep down the interest. The whole estate indeed is liable in respect of creditors; but between tenant for life, and him in reversion, the tenant for life is only obliged. 3 *Atk.* 201. 1 *Vez.* 93.

If the principal shall be discharged, then the tenant for life shall pay one third thereof, and the reversioner the other two thirds. 3 *Atk.* 201.

**LIGAN**, is where mariners, in danger of shipwreck, cast goods out of the ship; and because they know they are heavy and sink, *tie* them to a cork or buoy, that they may find and have them again. These, so long as they continue upon the sea, are under the jurisdiction of the admiralty; if cast away upon the land, they are under the jurisdiction of the common law, under the denomination of wreck.

**LIGHTS**. Stopping lights of an house is a nuisance for which an action will lie, if the house is an ancient house, and the lights ancient lights. But stopping a prospect is not; being only a matter of delight, and not of necessity. 3 *Salk.* 247.

**LIGNAGIUM**, the right which a man has to the cutting of fuel in woods; and sometimes it is taken for a tribute, or payment due for the same.

#### LIMITATION OF ACTIONS:

1. By the 32 *H. 8. c. 2.* "No person shall sue or maintain any writ of right, or make any prescription, title, or claim, to or for any manors, lands, tenements, rents, annuities, commons, pensions, portions, corodies, or other hereditaments, of the possession of his ancestor or predecessor, or declare any further seisin or possession thereof, but only within sixty years next before." *§. 1.*

*Writ of right.*] In every complete title to lands, two things are necessary, the *possession* and the *right*. Where the *possession* is severed from the *right*, the law anciently provided this *writ of right*; which in its nature is the highest writ in the law, and lieth only of an estate in fee simple, and not for him who hath a less estate. 3 *Blackst.* 176.

Where a person that hath *no right* hath taken possession of lands, the law hath provided that the legal owner may enter upon him without any formal process. But if the intruder had made an *alienation* of the land, or it had *descended* to his heir, in that case the legal owner could not enter upon him, but was driven to his *writ of entry* to gain possession; because, until the contrary be proved, the law will rather presume the right to be in the heir whose ancestor died seised, than in one who has no such presumptive evidence to urge in his own behalf. But after there had been more than *two descents* or *two conveyances*, the legal owner, though he had both the



right of *possession* and of *property*, was not allowed this possessory action of a *writ of entry*, but was driven to his WRIT OF RIGHT, a long and tedious remedy, to punish his neglect in not sooner putting in his claim; for after so long an acquiescence, the law presumes, either that the disseisor had a good right originally, or since his entry hath procured a sufficient title, and therefore will not suffer him to be disturbed without inquiring into the absolute right of *property*. And by this statute of limitation, the said claim is restricted to the term of sixty years; so that the possession of lands in fee simple uninterruptedly for sixty years, is an absolute title against all the world. 3 *Blackst.* 196.

But this kind of action by *writ of right*, as also the possessory actions by *writ of entry*, *assise*, *formedon*, and the like, although indeed they are not so absolutely antiquated as to be out of force, yet they are nearly out of use; there being but very few instances, for more than a century now last past, of prosecuting any real action for land by any of this kind of writs. The forms are indeed preserved in the practice of common recoveries; but they are forms, and nothing else; and the title of lands is now usually tried upon actions of *ejectment* or *trespass*. 3 *Blackst.* 197.

By the 1 *Mar. sess.* 2. c. 5. the afore said statute of 32 H. 8. c. 2. shall not extend to any *writ of right of advowson*, *quare impedit*, *assise of darrein presentment*, or *jure patronatus*. And the reason is, because it may happen that the title to an advowson may not come in question, nor the right have opportunity to be tried within sixty years.

Also the statute extends not to a demand for *tithes*; for that these are not of the nature of those demands intended to be barred by the statutes of limitation. 15 *Fin.* 107.

In like manner, the said statute doth not extend to *services*, which, by common possibility, may not happen or become due within sixty years, as to cover the hall of the lord, or to attend on him when he goeth to war, or the like; nor to a rent created by deed, nor to a rent reserved upon any particular estate, for in the one case the deed is the title, and in the other the reservation. 1 *Inst.* 115. a.

With respect to the *king*; by the 21 J. c. 2. & 9 G. 3. c. 16. the king shall not claim or demand any right or title in any manors, lands, or other hereditaments, (other than liberties and franchises,) by reason of any title accrued within sixty years next before commencing the action; but the subject may hold the same against all grants, suggestions of concealment,

ment, or other defective title. But this not to bar any remainder or reversion in the crown.

2. By the said statute of 32 H. 8. c. 2. "No person shall sue or maintain any *assise of mort-ancestor, cosinage, aye,* writ of entry, or other possessory action real, of the seisin of his ancestors, in lands; and either of their seisin, or his own, in rents, suits, and services; but only within fifty years next before." *Bl. B. 3. c. 10.*

*Assise of mort-ancestor, cosinage, aye.*] The word *assise* is derived from the Latin *assideo*, to sit together; and it signifies originally, the jury who try the cause, and sit together for that purpose. A writ of *assise*, is a real action for recovering the possession of lands, and differeth in nothing from a writ of entry, save only, that a writ of entry disproves the title of the defendant, by shewing the unlawful commencement of his possession; and an assise proves the title of the plaintiff merely by shewing his or his ancestor's possession.

The remedy by writ of *assise* is applicable to two species of injury by dispossession, viz. *abatement*, and *novel disseisin*. *Abatement*, is where a person dies seised, and before the heir or devisee enters, a stranger who has no right makes entry, and takes possession. If the abatement happened upon the death of the demandant's father or mother, brother or sister, uncle or aunt, nephew or niece, the remedy is by an assise of *mort d'ancestor*, or the death of one's ancestor. If it happened on the death of one's grandfather or grandmother, then an assise of *mort d'ancestor* doth no longer lie, but a writ of *ayle*, or *de avo*; if on the death of the great grandfather or great grandmother, then a writ of *besayle*, or *de proavo*; but if it mounts one degree higher, to the *tresayle*, or grandfather's grandfather, or if the abatement happened upon the death of any collateral relation, other than those before mentioned, then it is called a writ of *cosinage*, or *de consanguineo*.

An assise of *novel* (new or late) *disseisin*, is an action of the same nature with an assise of *mort d'ancestor*, and differs only in the form and manner of proceeding.

But all actions of this kind, as is aforesaid, are now almost entirely out of use. 3 *Bl. 197.*

3. By the same act of 32 H. 8. c. 2. "No person shall sue or maintain any action real for any lands or other hereditaments, of his own seisin or possession, above thirty years next before." *f. 4.*

And if, upon traverse, in any of these kinds of actions, he cannot prove seisin or possession within such respective times, he shall be for ever barred. *f. 6.*

For the law favours possession as an argument of right; and inclines rather to long possession without shewing any deed, than to an ancient deed without possession. *2 Inst. 118.*

4. By the 21 *J. c. 16.* "All writs of *formedon in descender*, *formedon in remainder*, and *formedon in reverter*, of any manors, lands, tenements, or other hereditaments, shall be brought within twenty years next after the title accrued, and not after: and no person shall *make entry* into any lands, tenements, or hereditaments, but within twenty years next after his title accrued; and, in default thereof, he shall be utterly disabled from such entry."

*f. 1.*

"But this shall not extend to infants, femmes covert, persons *non compos mentis*, imprisoned, or beyond the seas; provided that they bring their action, or make entry, within ten years after the impediment removed." *f. 2.*

*Formedon.*] Upon an alienation by tenant in tail, whereby the estate tail is discontinued, and the remainder or reversion is, by failure of the particular estate, displaced and turned into a mere right, the remedy is by action of *formedon*, *secundum formam doni*, reciting the form of the gift; which is in the nature of a writ of right, and is the highest action that tenant in tail can have; for he cannot have an absolute writ of right: which is confined only to such as claim in fee simple. The statute distinguishes the writ of *formedon* into three species:—A writ of *formedon in the descender* lieth where a gift in tail is made, and the tenant in tail aliens the lands intailed, or is disseised of them, and dies; in this case, the heir in tail shall have this writ of *formedon in the descender*, to recover these lands so given in tail against him who is then the actual tenant of the freehold. A *formedon in the remainder* lieth where a man gives lands to another for life, or in tail, with remainder to a third person in tail, or in fee; and he who hath the particular estate dieth without issue inheritable, and a stranger intrudes upon him in remainder, and keeps him out of possession; in this case, the remainder man shall have his writ of *formedon in the remainder*. A *formedon in the reverter* lieth where there is a gift in tail, and afterwards, by the death of the

the donee without issue of his body, the reversion falls in upon the donor, his heirs, or assigns; in such case, the reversioner shall have this writ to recover the lands.

3 *Blackst.* 192.

But these writs of *formedon* also are now antiquated, and in most cases, where the entry is lawful, men chuse to recover their possessions by *ejectment*, which is impliedly comprehended within the statute; for, as twenty years is the time of limitation in any writ of *formedon*, consequently twenty years is also the limitation in every action of *ejectment*; for no *ejectment* can be brought but where the claimant is intitled to enter on the lands, and no entry can be made by any person unless within twenty years after his right shall accrue. *Id.* 197.

By the 10 & 11 *W. c.* 14. no *fine* or *common recovery*, nor any *judgment* in any real or personal action, shall be reversed for any error or defect therein; unless the *writ of error*, or *suit*, be commenced within twenty years; and in case of being incapacitated as above, then within five years after such incapacity removed.

If, after an ouster of the rest, one *tenant in common*, or *jointenant*, continues in possession of the whole for twenty years, it is a bar. 2 *Atk.* 632.

If, a man has had possession of lands for twenty years without interruption, and then another gets possession, the person dispossessed (though plaintiff) may bring his *ejectment*; for a possession of twenty years is like a descent, which takes away the entry, and gives a right of possession, which is sufficient to maintain an *ejectment*. 2 *Salk.* 421.

Where there is a *trust* for payment of debts, it is established in equity, that this will revive debts which have been barred by the statute. 3 *Atk.* 107.

If the debtor by *will* directs the payment of *all* his debts, this revives a debt barred by the statute. *Cha. Prac.* 385.

The statute will not run as to a *legacy*; but it will run as to an *annuity*. 2 *Atk.* 71. And the reason why a *legacy* is out of the statute, is because it may be stopped till the debts are paid. 11 *Mod.* 44.

It is said to have been laid down as an invariable rule, if there be no demand for money due upon a *bond* for twenty years, that the judges will direct a jury to find it satisfied, from the presumption arising from the length of time. 2 *Atk.* 144. But in the case of *K. v. Stephens, M.* 31 *G.* 2.

Lord



Lord *Mansfield* said, that there is no direct and express limitation of time when a bond shall be supposed to have been satisfied: the general time indeed is commonly taken to be about twenty years, but he had known Lord *Raymond* leave it to a jury upon eighteen years. *Bur. Mansf.* 434.

It is a rule in equity in relation to the redemption of a mortgage, by way of analogy to the statute of limitation, that after twenty years possession a mortgagee shall not be disturbed. 3 *Atk.* 313.

If a man makes a mortgage by way of collateral security for money due upon a bond, although the mortgagee be not in possession for twenty years and more, yet if the interest be paid upon the bond according to the agreement of the parties, it shall not be barred by the statute. *L. Raym.* 740.

In the *Winchelsea* causes, *M. 7 G. 3.* it was laid down as a rule by the court of king's bench, that informations in nature of a *quo warranto*, for displacing members of a corporation, or the like, shall be limited to twenty years; as being analogous to the limitation of writs of *formedon*, and entry into lands, and also of dormant bonds, writs of error, bills of review, redemption of mortgages, and proof of possession upon bringing ejectments. *Bur. Mansf.* 1963.

5. By the aforesaid act of 21 *J. c.* 16. "All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover, and replevin, all actions of account, and upon the case, (other than such accounts as concern the trade of merchandize, between merchant and merchant,) all actions of debt grounded upon any lending, or contract without specialty, (*that is, not being by deed, or under seal,*) all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding, and imprisonment, shall be commenced within the time and limitation as followeth, and not after; that is to say, the said actions upon the case, (other than for slander,) and the said actions for account, and the said actions for trespass, debt, detinue, and replevin, and the said action for trespass *quare clausum fregit*, within six years after the cause of such action; and the said actions of trespass of assault, battery, wounding, or imprisonment, within four years, and the said action upon the case for words, within two years."

*f. 3.*

"Provided, that if any person that shall be intitled to any such action of trespass, detinue, action *sur trover*, replevin, action

“ action of *accounts*, action of *debt*, action of trespass for  
 “ assault, menace, battery, wounding, or imprisonment, action  
 “ upon the case for *words*, shall be at the time of the cause  
 “ of action within the age of twenty-one years, feme covert,  
 “ *non compos mentis*, imprisoned, or beyond the seas; such  
 “ person may bring his or her action within the said re-  
 “ spective times after such impediment shall be removed.”

f. 7.

*Between merchant and merchant.*] This extends only to merchants trading beyond the sea, and not to inland merchants. *Cha. Ca.* 152.

Also bills of exchange, and other transactions between merchants, are not excepted out of the statute, but only actions of account. And if the account is once stated, the statute after six years will run. *Show.* 341. 1 *Mod.* 10.

*Beyond the seas.*] If the plaintiff be in *England* at the time the cause of action accrues, the time of limitation begins to run; so that if he, or (if he dies abroad) his executor or administrator, do not sue within six years, they are barred by the statute. 1 *Wils.* 134.

For when the six years are once begun, the statute runs over all mesne acts, as coverture, infancy, or an assignment by a bankrupt. *Str.* 556.

Upon the aforesaid statutes, if in any suit the injury, or cause of action, happened earlier than the period expressly limited by law, the defendant may plead the statutes of limitation in bar; as, upon a promise of payment of money, the defendant may plead that he made no such promise within six years. *Blackst. B.* 3. c. 10.

But where a note is given for payment of an *annuity*, or for payment of money at a *future time*, or for payment of a sum of money by *instalments*; the defendant's pleading that he did not promise to pay within six years is bad; for he should have pleaded that the *cause of action* had not accrued within six years. For where the duty arises on a consideration executory, or for something to be done at a future time, it is not material when the promise was made, if the cause of action did accrue within the six years. 2 *Salk.* 422. 3 *Atk.* 71.

But where a promissory note is given for payment of money *upon demand*, this is a present duty; and thereupon the statute runs immediately, and doth not wait till demand shall be made. 12 *Mod.* 444. 15 *Vin.* 118.

Delivery

Delivery of the *last goods* by a tradesman continues the action for what was due before. *Wood. b. 4. c. 4.*

*Also*, a conditional promise after the six years will take it out of the statute; as if a man promise to pay for the goods, if the plaintiff can prove the goods delivered. *L. Raym. 421.*

It is generally said, that an *acknowledgment* of a debt within the six years will not amount to a new promise, so as to bring it back out of the statute: but it is evidence of a promise. *L. Raym. 422. 12 Mod. 224.*

And in the case of *Lacon and Briggs*, in chancery, lord *Hardwicke* said, there must be a direct admission of a debt to take it out of the statute; and there have been several cases at law, where this hath not been held sufficient, unless it is likewise attended with an express promise to pay; but (he adds) this may be rather too hard. *3 Atk. 107.*

The reason of the distinction seems to have been this: Acknowledgment of the debt is no more than what the statute supposes; for if there is no debt, there is nothing on which the statute can operate. For the statute doth not extinguish the debt, but only precludes the remedy after a certain limited time. But otherwise it is, in the case of payment of *interest* within the time limited: this is more than a bare acknowledgment; it is a payment of part of the debt; which supercedes any anterior promise, and draws after it the remaining part of the debt.

A writ of *latitat* taken out, and filed, and continued, is an avoidance of the statute; for it is a demand, and a good bringing of an action within the time. *1 Lill. Abr. 19. 3 Salk. 229.*

But if it is not actually sued out till after the six years, although tested within the six years, it is not relevant, and shall have no retrospect to the fictitious date, for the statute having once run in truth and reality, shall not be overhauled and brought back by fiction. *Bur. Mansf. 950.*

And the party who sues out the *latitat*, must have a *non est investus* returned by the sheriff, and then he must enter the writ upon the roll, and afterwards file it; otherwise, the suing it out will not avail. And all the continuances must be entered, and so shewn to the court. *12 Mod. 578.*

After commencement of the action, an acknowledgment of the debt will take it out of the statute; as ruled by Mr. Justice *Noel* on the circuit, and confirmed by the court  
of

of king's bench, in the case of Sir *William Yea v. Fouraker*, M. 1 G. 3. *Bur. Mansf.* 1099.

A bill in *chancery* is not a sufficient demand of the debt, so as to take it out of the statute. 1 *Atk.* 282. 2 *Atk.* 1.

**LIMITATION OF ESTATE**, in a legal sense, imports how long the estate shall continue, or is rather a qualification of a precedent estate; and if there be not a performance according to the limitation, it shall determine the estate without entry or claim; which a *condition* doth not. For there is a difference between a *limitation* and a *condition*. When an estate is expressly confined and limited by the words of its creation, that it cannot endure for any longer time, than till the contingency happens, upon which the estate is to fail; this is called a *limitation*; as when land is granted to a man so long as he is parson of such a church, or while he continues unmarried, or until out of the rents and profits he shall have raised such a sum; in such case the estate determines as soon as the contingency happens (when he ceases to be parson, marries, or has raised the sum specified); and the next subsequent estate, which depends upon such determination, becomes immediately vested, without any act to be done by him who is next in expectancy. But where an estate is granted expressly upon *condition* to be void when the grantee ceases to be parson of such a church, or marries, or hath raised out of the rents and profits such a sum, in such case, the law permits the estate to endure beyond the time when such contingency happens, unless the grantor, or his heirs or assigns, take advantage of the breach of the condition, and make either an entry or a claim in order to avoid the estate. 2 *Black.* 155.

**LINEN.** By 24 G. 3. c. 41. every callico printer, and printer, painter, or stainer of silks, linens, cottons, or stuffs, shall take out a licence annually, from the officers of excise. And by 27 G. 3. c. 13. and 28 G. 3. c. 37. several duties are imposed upon all goods printed, stained, painted, or dyed, in *Great Britain*; except such as shall be dyed throughout of one colour only. And also, certain duties are imposed on the importation, and drawbacks allowed on the exportation thereof; as set forth in schedules annexed to the said act.

And by several statutes, regulations are made for the manufacturing and marking linen cloth, cottons, and callicoes made in *Great Britain*.

LITERA,



**LITERA**, Fr. *litiere* or *liçtiere*, from the Latin *lectum*, a bed, signifies *litter*, or straw, now only used in stables for the bedding of horses ; but, in ancient times, beds were commonly made of it. Some manors were held of the king by the serjeanty of finding straw for the king's bedchamber, *inveniendi literam ad lectum regis*.

**LITERARY PROPERTY**. Authors have not, by the common law, the sole and exclusive copy-right remaining in themselves or their assigns in perpetuity, after having printed and published their compositions. But by the statute of 8 An. c. 19. it is secured to them for 14 years from the day of publishing ; and after the end of 14 years, the sole right of printing or disposing of copies shall return to the authors, if then living, for other 14 years. *Bur. Mansf.* 2409.

**LITIGIOUS**, is where a church is void, and two presentations are offered to the bishop upon the same avoidance ; in which case, the church is said to become litigious ; and if nothing further is done by either party, the bishop may suspend the admission of either of the clerks, and suffer a lapse to incur. 3 *Black.* 246.

**LIVERY OF SEISIN**, is a delivery of possession of lands, tenements, and hereditaments, unto one that hath right to the same ; being a ceremony in the common law used in the conveyance of lands, where an estate of fee-simple, fee-tail, or other freehold passeth. 1 *Inst.* 48.

And this, by the common law, is necessary to be made upon every grant of an estate of freehold in hereditaments corporeal, whether of inheritance or for life only. And this is one reason why a freehold cannot be made to commence *in futuro*, because actual possession is to be given, which must take effect at that instant, or not at all. 2 *Black.* 314.

Livery of seisin is thus performed : The feoffor or his attorney, together with the feoffee or his attorney, come to the land, and there, in the presence of witnesses, declare the contents of the feoffment, on which delivery is to be made. And then the feoffor doth deliver to the feoffee, all other persons being out of the ground, a clod, or turf, or a twig, or bough there growing, with words to this effect : " I deliver these to you, in the name of seisin of all the lands " and tenements contained in this deed." But if it be of an

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an house, the feoffor must take the ring or latch of the door, the house being quite empty, and deliver it to the feoffee in the same form; and then the feoffee must enter alone, and shut to the door, and then open it, and let in the others. And there must be as many liveries as there are lands in several counties. 2 *Black.* 315. And it is usual to indorse the livery of seisin on the back of the deed, specifying the manner, place, and time, together with the names of the witnesses.

But in an exchange, a fine, a devise, a surrender by custom, a lease and release, a bargain and sale by deed, indented and enrolled, (because the statute of uses, 27 *H. 8. c. 10.* gives the possession to the use,) a freehold may pass without livery. 1 *Inst.* 50.

Also, in hereditaments incorporeal, livery of seisin cannot be made, for they are not the object of the senses; and in leases for years, or other chattel interest, it is not necessary. In leases for years, indeed, an actual entry is necessary to vest the estate in the lessee; for the bare lease gives him only a right to enter; and when he enters in pursuance of that right, he is then, and not before, in the possession of his term. 2 *Black.* 314.

**LOCAL ACTION**, is an action restrained to the proper county, in opposition to a *transitory* action, which may be laid in any county at the plaintiff's discretion. In local actions, where possession of land is to be recovered, or damages for an actual trespass, or for waste, or the like, affecting land, the plaintiff must lay his declaration, or declare his injury to have happened in the very county and place that it really did happen: but in transitory actions, for injuries that may have happened any where, as debt, detinue, slander, and the like, the plaintiff may declare in what county he pleases, and then the trial must be in that county in which the declaration is laid; though if the defendant will make affidavit that the cause of action, if any, arose not in that, but in another county, the court will oblige the plaintiff to declare in the proper county. 3 *Black.* 294.

**LONDON** (custom of):

1. If a freeman of *London* dies intestate, his effects, after payment of his debts, are divided according to the ancient

universal doctrine of the *pars rationabilis*. If he leaves a widow and children, his substance (deducting the widow's apparel, and furniture of her bedchamber) is divided into three parts; one of which belongs to the widow, another to the children, and the third to the administrator: if only a widow, or only children, they shall respectively, in either case, take one moiety, and the administrator the other; if neither wife nor child, the administrator shall have the whole. And this portion, or *deadman's part*, the administrator was wont to apply to his own use, till the statute 1 Jac. 2. c. 17. declared, that the same should be subject to the statutes of distribution. If she hath a jointure made to her before marriage, in bar of her customary part, yet she shall have her share of the deadman's part, under the statute of distribution, unless barred by special agreement. And if any of the children are advanced by the father in his lifetime with any sum of money, (not amounting to their full proportionable part,) they shall bring their portion into hotchpot with the rest of the brothers and sisters, but not with the widow, before they are intitled to any benefit under the custom; but, if they are fully advanced, the custom intitles them to no farther dividend. 2 Black. 518.

2. In *London*, every day, except *Sunday*, is a market overt; and sales in the shops there for valuable consideration are good. 5 Co. 83.

3. By custom in *London*, where a feme covert useth any craft in the said city, on her sole account, wherewith the husband meddleth not, she shall be charged as a feme sole concerning every thing that touched her craft; and if the husband and wife shall be impleaded, the wife shall plead as a feme sole; and if she is condemned, she shall be committed to prison till she has made satisfaction; and the husband and his goods shall not be charged or impeached. *Bur. Mansf.* 1776.

And such feme covert sole trader is liable to a commission of bankruptcy: but the commission ought to be confined to matters in the way of her trade. *Id.* 1784.

If her husband becomes bankrupt, and afterwards she becomes bankrupt, the husband's assignees cannot take her effects; they belong to *her* assignees. And the question is not between husband and wife, but between his creditors and her creditors. *Id.*

#### 4. Customs

4. Customs of *London*, if put in issue, are certified by the mayor and aldermen by the mouth of their recorder.  
*Id.* 249.

LORD, *dominus*, is a word or title of honour, diversely used, being attributed not only to those who are noble by birth or creation, otherwise called peers of the realm, and *lords of parliament*; but to such as are so called by the curtesy of *England*, as all the sons of a duke, and the eldest son of an earl; and to persons honourable by office, as the *lord chief justice*, and sometimes to a private person that hath the fee of a manor, and consequently the homage of the tenants within his manor, for by his tenants he is called *lord*. In this last signification, it is most used in our law books, where it is divided into lord *paramount*, or superior lord, and lord *mesne*, (*medius*,) middle, between the lord *paramount* and the tenant.

LORD's DAY. All persons, not having reasonable excuse, shall resort to the *church* (or some congregation of religious worship allowed by the laws of this realm) on every *Sunday*; on pain of one shilling for every omission.  
*1 El. c. 2.*

By several acts of parliament there are penalties inflicted upon persons exercising their *worldly calling* on the Lord's day.

King *James* the first, in the *Book of Sports*, 1618, declared the following games to be *lawful*, viz. dancing, archery, leaping, vaulting, May-games, Whitsun-ales, and morris dances; and allowed the same to be used on *Sundays* after evening service; but restraining all recusants from this liberty, and commanding each parish to use these recreations by itself; and prohibiting all *unlawful* games, bear baiting, bull baiting, interludes, and bowling by the meaner sort. And, by statute 1 C. c. 1. it is enacted, that there shall be no concourse of people out of their own parishes on the Lord's day, for any sport or pastime; or any bear baiting, bull baiting, interludes, plays, or other unlawful exercises and pastimes used by persons within their own parishes; on pain of 3s. 4d. for each offence.

Killing game on the Lord's day, incurs a forfeiture of 20s., or not less than 10s. for the first offence; for the second offence 30s., or not less than 20s.; and for every other offence



50/. To be recovered before the justices of the peace.  
13 G. 3. c. 80.

By the 29 C. 2. c. 7. no *arrest* shall be made, nor *process* served on the Lord's day, (except for treason, felony, or breach of the peace,) but the service thereof shall be void. But this doth not extend to ecclesiastical process, as citations, or excommunications. *Gibf.* 371.

The hundred shall not be answerable for *robbery* committed on the Lord's day. 29 C. 2. c. 7.

The Lord's day is not a *juridical* day; therefore, when the return days are fixed on *Sunday*, (as it often happens,) yet the court never sits to receive the returns till the *Monday* following: for no proceedings can be had, or judgment given, or supposed to be given, on a *Sunday*. 3 *Black.* 278.

LOTTERIES, by 10 & 11 W. c. 17. are declared to be public nuisances; and all grants, patents, and licences, for such lotteries, to be against law. And the setting up of any lottery, is, by several acts of parliament, made punishable with very high penalties. But, for the public service of the government, lotteries are frequently established by particular statutes, and managed by special officers and persons appointed.

And by 27 G. 3. c. 1. all persons who shall publicly or privately set up, or keep, by himself or any other, any office or place for buying, selling, or dealing in lottery tickets, or shares thereof, without being licensed, shall be deemed rogues and vagabonds, and shall be punished as directed by 17 G. 2. c. 5.

LOWBELL, from the Saxon *low*, a flame of fire, is an invention of taking birds in the night with a *light* and a *bell*; by the sight and noise whereof, birds, sitting upon the ground, become stupified, and so are covered and taken with a net: which is, by the game acts, prohibited.

LUNATIC, is one that at certain times is deprived of the use of his understanding; and is so denominated, from his disorder being supposed to depend upon the change of the *moon*.

By the statute of *prerogativa regis*, 17 Ed. 2. c. 10. the king shall provide, in the case of lunatics, that their lands and tenements

tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently with the profits of the same; and the residue, besides their sustentation, shall be kept to their use, to be delivered unto them when they come to their right mind, or otherwise to their executors or administrators.

The method of proving a man *non compos* is, by process out of chancery, from whence a commission issues to the sheriff, to inquire, by a jury, into the party's state of mind. And if he be found *non compos*, the lord chancellor usually commits the care of his *person* to some friend, who is then called his *committee*. But the next heir is seldom permitted to have the care of his person, because it is his interest that the party should die. But the heir is generally made the manager of his *estate*, because it is his interest to keep it in good condition. 1 *Black.* 305.

Any person may justify confining and beating his friend, being mad, in such manner as is proper in such circumstances. 1 *Haw.* 130. And the overseers of the poor, by the vagrant act, may confine lunatic vagrants.

The marriage of a lunatic, not being in a lucid interval, hath, by the late determinations, been adjudged to be void. But as it may be difficult to prove the exact state of the party's mind, at the actual celebration of the marriage, therefore the statute of 15 G. 2. c. 30. hath provided, that the marriage of lunatics, and persons under phrenzies, (if found lunatics under a commission,) before they are declared of sound mind by the lord chancellor, shall be totally void.

A conveyance to or by a lunatic is not absolutely void, but voidable; and the next heir may, after his death, take advantage of his incapacity and set it aside. 4 *Co.* 123. By 29 G. 2. c. 31. and 11 G. 3. c. 30. the guardians of lunatics may make leases under the direction of the court of chancery; and under the like direction, a lunatic may surrender or accept of a surrender of a lease in order to renew it.

In criminal cases, a lunatic is not chargeable for his own acts whilst under that incapacity. If there be any doubt whether he be *compos* or not, this shall be tried by an inquest of office to be returned by the sheriff; and if he be found *non compos*, this, as it excuses from the guilt, so also consequently from the punishment. But if he hath lucid intervals of understanding, he shall answer for what he does in those intervals, as if he had no deficiency. 1 *Haw.* 2.

If a man be *compos* when he commits a crime, yet if he becomes *non compos* after, he shall not be indicted ; if after indictment, he shall not be convicted ; if after conviction, he shall not receive judgment ; and, if after judgment, he shall not be ordered for execution. 4 *Black.* 395.

If a person who wants discretion commit a trespass against the person or possession of another, he shall be compelled in a civil action to give satisfaction for the damage. 1 *Haw.* 2.

## M A G

**M**AGNA CHARTA, the great charter of liberties granted first by king *John*, and afterwards with some alterations confirmed in parliament by king *Henry* the third. It is so called, either for the excellency of the laws therein contained, or because there was another charter called the *charter of the forest*, which was the less of the two ; or in regard of the great wars and troubles in obtaining it. The said king *Hen.* 3. after it had been several times confirmed by him, and as often broken, at last, in the 37th year of his reign, confirmed it in the most solemn manner. He came into *Westminster-hall*, and, in the presence of the nobility and bishops, with lighted candles in their hands, *magna charta* was read ; the king all that while laying his hand on his breast, and at last solemnly swearing “faithfully and inviolably to observe all things therein contained, as he was a man, a christian, a soldier, and a king.” Then the bishops extinguished the candles, and cast them to the ground, and every one said, “Thus let him be extinguished, and stink in hell, who violates this charter.” Upon which the bells were set a ringing, and all persons by their rejoicing approved of what was done. Afterwards, king *Ed.* 1. confirming this charter, in the 25th year of his reign, made an explanation of the liberties therein granted to the people ; adding some, which are now called *articuli super chartas* ; and in the confirmation he directed that this charter should be read twice a year to the people, and sentence of excommunication to be constantly denounced against all that by word, or deed, or counsel, shall act contrary thereto, or in any degree infringe it. And afterwards, Sir  
*Edward*

*Edward Coke* observes, that it was confirmed by upwards of thirty subsequent corroboratory statutes. This charter, besides redressing many grievances incident to feudal tenures, which were of no small moment at that time, provided for the protection of the subject against other oppressions, then frequently arising from unreasonable amercements, from illegal distresses or other process for debts or services due to the crown, from the tyrannical abuse of the prerogative and pre-emption. It fixed the forfeiture of lands for felony, in the same manner as it still remains; it established the testamentary power of the subject over part of his personal estate, the rest being distributed among his wife and children; it laid down the law of dower, as it hath continued ever since. In matters of public police and national concern, it enjoined an uniformity of weights and measures; gave new encouragement to commerce, by the protection of merchant strangers; and forbade the alienation of lands in mortmain. With regard to the administration of justice, besides prohibiting all denials, or delays of justice, it fixed the court of common pleas at *Westminster*, that the suitors might be no longer harassed with following the king's person in all his progresses; and at the same time brought the trial of issues home to the very doors of the freeholders, by directing assizes to be taken in the proper counties, and establishing annual circuits: it directed the regular awarding of inquests for life or member; and regulated the time and place of holding the inferior tribunals of justice, the county court, sheriff's tourn, and court leet. It confirmed and established the liberties of all the cities, boroughs, towns, and ports of the kingdom. And, lastly, (which alone would have merited the title that it bears, of the *great* charter,) it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his equals, or the law of the land. 4 *Black.* 423.

**MAIDEN RENT**, was a sum of money paid to the lord on the marriage of his tenant's daughter, said to be in recompence of the custom of the lord's lying with the bride the first night after marriage. Others suppose it to have been a fine for licence to marry a daughter.

**MAIHEM.** See **MAYHEM.**

H 3

**MAILE,**



MAILE, in *French*, is a small piece of money; and in 9 *Hen.* 5. silver half-pence here were termed mailes. In a large acceptation, the word *maile* signifies a rent in general, paid either in money, corn, cattle, or other goods, as geese maile, cow maile, and the like; and in *Scotland*, maile is still the common name for rent. White maile, white rents, vulgarly called quit rents, were rents paid in silver, and thereby distinguished from work-day rents, cummin-rents, corn-rents, and the like. Black maile or black rents, seem properly to have been rents paid in cattle; but, more largely taken, they seem to have been used to denote all rents not paid in silver, in contradistinction to the blanch farms or white rents.

MAIM, is such a hurt of any part of a man's body, whereby he is rendered less able in fighting, either to defend himself, or annoy his adversary. For the limbs of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country, when occasion shall be offered. 1 *Inst.* 127.

The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye, or foretooth, or castrating him, are said to be maims; but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken, but only disfigure him. 1 *Haw.* 111.

By the statute 22 & 23 *C. 2. c. 1.* if any person, on purpose and by lying in wait, shall cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any person, with intention to maim or disfigure him; he shall be guilty of felony without benefit of clergy. If the maim comes not within any of the descriptions of this act, yet it is indictable at the common law, and may be punished by fine and imprisonment; or an appeal may be brought for it at the common law, in which the party injured shall recover his damages; or he may bring an action of trespass, which kind of action hath now generally succeeded into the place of appeals, in smaller offences not capital. 2 *Haw.* 157.

MAINOUR, (*main-avoir*, Fr.) is when a thief is apprehended in the very act, *having* the thing stolen in his *hand* or possession. This was anciently called *handhabbend*, and sometimes

sometimes *backberend*, as a bundle or fardel on his back.  
2 *Inst.* 188.

Anciently, if one guilty of larceny had been freshly pursued and taken with the *manner*, and the goods so found upon him had been brought into the court with him, he might be tried immediately without any indictment; and this is said to have been the proper method of proceeding in those manors which had the franchise of *infangthesfe*, but seems to be altogether obsolete at this day. 2 *Harv.* 211.

**MAINPERNORS**, *manu captores*, are those persons to whom a man is delivered out of custody or prison, on their becoming bound for his appearance; which, if he do not, they forfeit their recognizances.

**MAINPRISE**, (*manu captio*, a taking into the hand, from the French *main*, a hand, and *pris*, taken,) signifies taking a man into friendly custody who might otherwise be committed to prison, upon security given for his appearance at a time and place assigned. He is supposed to go at large, and to be at his own liberty, under no possibility of being confined by his mainpernors or sureties, as in the case of bail. *Wood. b. 4. c. 4.*

The difference between bail and mainprise is this; that mainpernors are only sureties, who, in case the person doth not appear, (though he was never arrested or in prison,) are to forfeit their recognizances: but bail is a custody; for no man is bailed but he that is under an arrest or in prison; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him or deliver him up to a justice of the peace, who ought to commit the prisoner in discharge of the bail, or put him to find new sureties. *Hale's Pl.* 96.

There is also a *writ of mainprise*, directed to the sheriff, (either generally, when a man is imprisoned for a bailable offence, and bail hath been refused; or specially, when the offence or cause of commitment is not properly bailable below,) commanding him to take sureties for the prisoner's appearance, and to set him at large. 3 *Black.* 128.

**MAINTENANCE**, (*manu tenere*,) is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance of common right: and it is twofold; either *in the country*, as where one assists another in his pretensions to certain lands by taking or holding the possession of them for him by force or

subtilty, or where one stirs up quarrels in the country in relation to matters wherein he is no way concerned; or in the *courts of justice*, where one officiously intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money, or otherwise, in the prosecution or defence of any such suit. 1 *Haw.* 249.

Of this second kind of maintenance there are three species: 1. Where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of *maintenance*. 2. Where one maintains one side to have part of the thing in suit; which is called *champerty*. 3. Where one laboureth a juror; which is called *embracery*. *Id.*

Persons guilty of maintenance are not only liable to an action at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff; but also they are indictable as offenders against public justice, and adjudged thereupon to such fine and imprisonment as the court shall award, according to the circumstances of the offence. 1 *Haw.* 255.

MALICE, when spoken of in relation to the crime of murder, is not to be understood in so restrained a sense as to signify only a spite or malevolence to the deceased person in particular, but, more largely, an evil design in general, the dictate of a wicked, depraved, and malignant heart. It is of two kinds; *express*, or *implied*. Malice *express* is, when one, with a sedate, deliberate mind, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. Malice *implied* is various; as when one voluntarily kills another without any provocation, or where one wilfully poisons another; in such like cases, the law implies malice, though no particular enmity can be proved. 4 *Black.* 198.

MALT. By the 12 *An. st. 1. c. 2.* no malt shall be imported, on forfeiture of the same, and the value thereof.

And, by the same statute, a duty is imposed on all malt made in *England*, from barley or other grain; which duty hath been continued by annual acts ever since.

And by the 27 *G. 3. c. 13.* a further duty is imposed on all malt made in *England* or *Scotland*; or made in *Scotland*, and brought into *England*. And allowances are to be made on malt exported, as set forth in schedules annexed to the act.

And

And by the 24 G. 3. c. 41. a licence is required to be taken out annually, by every maker of malt for sale, from the offices of excise.

MAN, *Isle of*, is a distinct territory from *England*, and is not governed by our laws; neither doth any act of parliament extend to it, unless it be particularly named therein. It was formerly a subordinate feudatory kingdom, subject to the kings of *Norway*; then to the kings of *England*; afterwards to the kings of *Scotland*; and then again to the crown of *England*; and was finally granted, by king *James* the first, to *William Stanley* earl of *Derby*, and the heirs male of his body, with remainder to his heirs general; which grant was confirmed by act of parliament, with a restraint of the power of alienation by the said earl and his issue male. On the death of *James* earl of *Derby* in the year 1735, the male line of earl *William* failing, the duke of *Athol* succeeded to the island, as heir general by a female branch. In the mean time, though the title of king had long been disused, the earls of *Derby*, as lords of *Man*, had maintained a sort of royal authority therein; which being found inconvenient for the purposes of public justice, and for the revenue, (it affording a commodious asylum for debtors, outlaws, and smugglers,) authority was given to the treasury, by statute 12 G. c. 28. to purchase the interest of the then proprietors for the use of the crown; which purchase was at length completed in the year 1765, and confirmed by the statutes 5 G. 3. c. 26. & 39. whereby the whole island, and all its dependencies, (except the landed property of the *Athol* family, their manerial rights and emoluments, and the patronage of the bishopric and other ecclesiastical benefices,) are unalienably vested in the crown, and subjected to the regulations of the British excise and customs. 1 *Black*. 105.

MANBOTE, a compensation or recompence for homicide; for in ancient time almost all offences might be compensated for money.

MANDAMUS, is a writ issuing in the king's name out of the court of king's bench, and directed to any person, corporation, or inferior court of judicature, commanding them to do some particular thing therein specified, as appertaining to their office and duty. 3 *Black*. 110.

It is a high prerogative writ, of a most extensively remedial nature. It lies to compel the admission or restoration of the party applying, to any office or franchise of a public nature,



nature, whether spiritual or temporal; it lies for the production, inspection, or delivery of public books and papers; for the surrender of the regalia of a corporation; to oblige bodies corporate to affix their common seal; to compel the holding of a court; and for an infinite number of other purposes: more particularly, it lies to the judges of any inferior court, commanding them to do justice according to the powers of their office, whenever the same is delayed: for it is the peculiar business of the court of king's bench, to superintend all other inferior tribunals, and therein to enforce the due exercise of those judicial or ministerial powers, with which the crown or legislature have invested them; and this, not only by restraining their excesses, but also by quickening their negligence, and obviating their denial of justice. *Id.*

The writ is grounded on a suggestion, by the oath of the party injured, of his own right, and the denial of justice below; whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made, (except in some general cases, where the probable ground is manifest,) directing the party complained of to shew cause why a writ of mandamus should not issue; and if he shews no sufficient cause, the writ itself is issued, at first in the alternative, either to do this, or signify some reason to the contrary; to which a return or answer must be made at a certain day. And if the inferior judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues, in the second place, a *peremptory* mandamus, to do the thing absolutely; to which no other return will be admitted, but a certificate of perfect obedience, and the execution of the writ. *Id.* 311.

If the inferior judge, or other person, makes no return, or fails in his respect and obedience, he is punishable for his contempt by attachment. But if he at first returns a sufficient cause, although it should be false in fact, the court of king's bench will not try the truth of the fact upon affidavits, but will for the present accept the return, and proceed no further on the mandamus. But then the party injured may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained; together with a peremptory mandamus to do his duty. *Id.*

Or, for a more speedy redress, the party prosecuting the mandamus may, on the first return to the mandamus, plead to or traverse all or any of the material facts in the said return;

turn: to which the person making the return shall reply, take issue, or demur; and such further proceedings may be had thereupon in all respects, as if the person prosecuting the mandamus had brought his action upon the case for a false return. 9 *An. c.* 20.

Where there are cross mandamuses, as to admit different persons to one and the same office, they must both be obeyed; for it is without prejudice to the right of either claimant, for a mandamus gives no right: it only brings the matter into a course of trial. *Bur. Mansf.* 1422.

MANNER. See MAINOUR.

MANOR, *manerium*, à *manendo*, because the usual residence of the owner, was a district of ground, held by lords or great personages, who kept in their own hands so much land as was necessary for the use of their families, which were called *terra dominicales*, or demesne lands, being occupied by the lord, or *dominus manerii*, and his servants. The other lands they distributed among their tenants, which the tenants held under divers services. The residue of the manor, being uncultivated, was termed the lord's waste, and served for common of pasture to the lord and his tenants. Manors were formerly called *baronies*, as they still are *lordships*: and each lord or baron was empowered to hold a domestic court, called the *court-baron*, for redressing misdemeanors and nuisances within the manor, and for settling disputes of property among the tenants. 2 *Black.* 90.

MANSLAUGHTER, is such killing of a man, as happens either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. There is no difference between murder and manslaughter, but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kills the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given. This offence is within the benefit of clergy, but the offender shall be burned in the hand, and forfeit all his goods and chattels. 3 *Inst.* 55.  
MAN-

**MANSTEALING**, or kidnapping, is the forcible abduction, or the stealing away, of man, woman, or child, from their own country, and sending them into another. By the ancient Jewish law, and by the civil law, this crime is punished with death; but by the common law of *England*, the punishment thereof doth not extend unto death; but the offender being found guilty, is liable to be fined, imprisoned, and pilloried, at the discretion of the court. 4 *Black.* 219.

**MANUMISSION**, was the freeing of a slave out of bondage; and was so denominated from the master's taking him by the hand before the sheriff in the county court, and delivering him, or letting him go at liberty, with a declaration that it is his will that the slave shall thence go free.

**MARCHERS**, or **LORDS MARCHERS**, were the keepers or wardens of the *marches* or boundaries of the kingdom, between *England* and *Scotland*, and *England* and *Wales*; so denominated from the word *marche*, a limit. They had courts of *marche*, wherein they tried causes of different kinds, and especially offences against the public peace, which went by the general name of *marche treason*.

**MARINARIUS**, a mariner, or seaman: and *marinarius capitaneus*, was the admiral or warden of the ports; which offices were commonly united in the same person: the word *admiral*, not coming into use till the latter end of the reign of king *Edward* the first; before which time, the king's letters ran thus: *Rex capitaneo marinariorum et ejusdem marinariis, salutem.*

**MARISCUS**, a marsh, or fenny ground.

**MARITAGIUM**, *marriage*, was the privilege which the lord anciently had of giving a female heir, being his tenant, in marriage; in order to support the feudal services.

**MARKET.** See **FAIR**.

**MARQUE** and **REPRISAL**. When the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs, letters of *marque* and *reprisal* (words in themselves synonymous, and signifying a taking in return) are grantable by the  
the

the law of nations, in order to seize the bodies or goods of the subjects of the offending state, until satisfaction be made, wherever they happen to be found. To which purpose it is declared by the statute 4 *Hen. 5. c. 7.* that if any subjects of the realm are oppressed in time of truce by any foreigners, the king will grant *marque* in due form, to all that feel themselves grieved. And, on complaint to the keeper of the privy seal, he shall make to the party complainant, *letters of request* under the *privy seal*. And if, after such request of satisfaction made, the party required doth not make, in convenient time, due restitution or satisfaction to the party grieved, the lord chancellor shall make him out *letters of marque* under the *great seal*. And by virtue of these, he may attack and seize the property of the aggressor nation, without hazard of being condemned as a robber or pirate. 1 *Black.* 258.

**MARQUESS**, is a title of honour, above an earl, and next below a duke. His office, when he first received this denomination, was to guard the frontiers and limits of the kingdom, which were called the *marches*, from the Teutonic word *marche*, a limit; as were the *marches* of *England* and *Wales*, whilst they continued hostile countries.

#### MARRIAGE :

1. Of marriage there are several disabilities : One is, upon account of *kindred*; either by consanguinity, which is a relation by blood; or by affinity, which is a relation by marriage. But marriages within the degrees prohibited, are not *ipso facto* void, but only voidable by sentence of divorce in the spiritual court. And after the death of either of the parties, the courts of common law will not suffer the spiritual court to declare such marriages to have been void, so as to bastardize the issue. 1 *Black.* 434.

By the civil law, first cousins are allowed to marry, but by the canon law, both first and second cousins (which was in order to make dispensations more frequent) are prohibited. Therefore, where it is vulgarly said, that first cousins may marry, but second cousins cannot, probably this arose by confounding these two laws. But, by the law of *England*, it is lawful for both first and second cousins to marry.

2. Another disability is a *prior marriage*, or having another husband or wife living; in which case, the second marriage



is actually void, without any declaratory sentence. 1 *Black*, 436.

3. Another disability is *want of age*. In which case, if a boy under fourteen, or a girl under twelve years of age, marries, this marriage is only inchoate and imperfect; and when either of them comes to those respective ages, they may disagree, and declare the marriage void. But, if at such age of consent, they agree to continue together, they need not be married again. If the husband be of years of discretion, and the wife under twelve, when she comes to years of discretion, he may disagree as well as she may; for, in contracts, the obligation must be mutual, both must be bound or neither; and so it is on the contrary, when the wife is of years of discretion, and the husband under. *Id.*

4. Formerly, another disability was a *pre-contract*, either *per verba de presenti*, or *per verba de futuro*. A contract *per verba de presenti*, was deemed a valid marriage, and the parties might have been compelled in the spiritual court to celebrate it in the face of the church. But now, by the 26 G. 2. c. 33. no marriage is valid that is not celebrated in some parish church, or public chapel, unless by dispensation from the archbishop of *Canterbury*. It must also be preceded by publication of banns, or by licence from the spiritual judge. *Id.* 439.

And by the statute of frauds and perjuries, 29 C. 2. c. 3. no action shall be brought whereby to charge any person upon any agreement made upon consideration of marriage, unless the agreement or some memorandum or note thereof be in writing, and signed by the party to be charged therewith.

5. Another incapacity arises from want of *consent* of parents or guardians; to which purpose, it is enacted by the 26 G. 2. c. 33. that all marriages solemnized by *licence*, where either of the parties, not being a widower or widow, shall be under the age of twenty-one, without the consent of the father if living, or guardian, or mother, (where there is no guardian,) if living, and unmarried, otherwise, of a guardian appointed by the court of chancery, shall be void. And in case of *banns* published, where either of the parties is under age, if the parent or guardian shall publicly declare, or cause to be declared, at the time and place of publication, his dissent to the marriage, such publication shall be void.

6. Another incapacity is want of *reason*; without a competent share of which, no contract can be binding. Therefore,

fore, the marriage of idiots, and of lunatics, (unless under the direction of the court of chancery,) is totally void. 1 *Black.* 438.

7. In all cases where banns have been published, the marriage shall be solemnized in one of the churches or chapels where the banns were published; and in case of licence, it shall be solemnized in one of the churches or chapels where one of the parties hath been usually resident for four weeks next before. 26 G. 2. c. 33.

But by a general clause in the said act, nothing therein shall extend to *Scotland*; nor to any marriages amongst the people called Quakers, or Jews, where both the parties are Quakers or Jews respectively; nor to any marriages beyond the seas.

In the case of *Robinson and Bland*, M. 1 G. 3. lord *Mansfield* (arguendo) said, "It has been laid down at the bar, that a marriage in a foreign country must be governed by the laws of that country where the marriage was had; which, in general, is true. But the marriages in *Scotland*, of persons going from hence for that purpose, were instanced by way of example. These may come under a very different consideration; according to the opinion of *Huberus*, p. 33. and other writers. No such case hath yet been litigated in *England*, except one, of a marriage at *Ostend*; which came before lord *Hardwicke*, who ordered it to be tried in the ecclesiastical court. But the young man came of age, and the parties were married over again; and so the matter was never brought to a trial." *Bur. Mansf.* 1079.

But in *Buller's Law of Nisi Prius*, p. 113. there is a short note of a case wherein this point was afterwards determined, upon an appeal to the delegates; viz. *Compton and Bearcroft*, 1 Dec. 1768. The appellant and respondent, being both *English* subjects, and the appellant being under age, ran away without the consent of her guardian, and were married in *Scotland*; and, on a suit brought in the spiritual court to annul the marriage, it was holden that the marriage was good.

8. By several statutes a penalty of 100*l.* is inflicted for marrying any persons without banns or licence. But by the 26 G. 2. c. 33. if any person shall solemnize matrimony without banns or licence obtained from some person having authority to grant the same, or in any other place than a church or chapel where banns have been usually published, unless by special licence from the archbishop of *Canterbury*,

terbury, he shall be guilty of felony, and transported for fourteen years; and the marriage shall be void.

9. The lawfulness of marriage is to be tried by the bishop's certificate, upon an issue, *whether accoupled in lawful matrimony*; as in a writ of dower, or other writ brought in the temporal courts. But whether a woman is the wife of such a person, is triable by a jury upon such an issue. 1 *Inst.* 134.

10. Of *divorce*, or separation of the parties, there are two kinds; the one total, the other partial: the one *a vinculo matrimonii*, from the band of matrimony; the other *a mensa et thoro*, being merely from cohabitation. 1 *Black.* 440.

The total divorce, *a vinculo*, must be from some cause of impediment existing before the marriage, as in the case of consanguinity; and in this the marriage is declared null, as having been absolutely unlawful *ab initio*. And the issue of such marriage as is thus entirely dissolved, are bastards. 1 *Black.* 440.

Divorce *a mensa et thoro*, from bed and board, is when the marriage is just and lawful in itself, but from some supervenient cause it becomes improper for the parties to live together, as in case of cruel usage or adultery in either of the parties. *Id.*

But for adultery, divorces *a vinculo matrimonii* have of late years been frequently granted by act of parliament, and the parties allowed to marry again. *Id.* 441.

11. In case of divorce *a mensa et thoro*, the law allows *alimony*, or maintenance, to the wife, out of her husband's estate, at the discretion of the ecclesiastical judge. This is sometimes called the *eslovers*, for which, if he refuses payment, there is (besides the ordinary process of excommunication) a writ at common law *de esloveriis habendis*, in order to recover it. But, in case of elopement, and living with an adulterer, the law allows her no alimony; for as that amounts to a forfeiture of her dower after his death, it is also a sufficient reason why she should not be partaker of his estate when living. 3 *Black.* 94.

MARSHALSEA court, was originally held before the steward and marshal of the king's house, and was instituted to administer justice between the king's domestic servants, that they might not be drawn into other courts, and thereby the king lose their service. It held plea of all trespasses committed within the verge of the court, where only one of the parties is in the king's domestic service, in which case, the

inquest shall be taken by a jury of the country; and of all debts, contracts, and covenants, where both of the contracting parties belong to the royal household, and then the inquest shall be composed of men of the household only. Afterwards king *Charles* the first erected a new court of record, called the *curia palatii*, or *palace court*, to be held before the steward of the household, and knight marshal, and the steward of the court, or his deputy, with jurisdiction to hold plea of all manner of personal actions whatsoever, which shall arise between any parties within twelve miles of his majesty's palace of *Whitehall*. The court is now held once a week, together with the ancient court of marshalsea, in the borough of *Southwark*: and a writ of error lies from thence to the court of king's bench. But if the cause is of any considerable consequence, it is usually removed on its first commencement, together with the custody of the defendant, either into the king's bench or common pleas, by a writ of *habeas corpus cum causa*. And as to matters of inferior consequence, the business of the court hath of late years been much reduced, by the new courts of conscience erected in the environs of *London*. 3 *Black.* 76.

**MARSHALSEA** prison, belonging to the court of king's bench. By the 43 *Eliz.* c. 2. & 11 *G.* 2. c. 20. the justices of the peace yearly, in *Easter* sessions, shall set down what sums shall be sent out of every county or place corporate, for the relief of the poor prisoners of the king's bench and marshalsea prisons, so as there be sent out of every county 20s. at the least to each of the said prisons.

**MARTIAL LAW.** Anciently, preparatory to an actual war, the kings of this realm, by advice of the constable and marshal, were used to compose a book of rules and orders, for the due governance and discipline of their officers and soldiers, together with certain penalties on the offenders; and this was called *martial law*. But in truth and reality, this was not a law, but something indulged rather than allowed as a law; the necessity of government, order, and discipline in an army, being that only which could give to those laws any countenance and encouragement. *Hale's Hist. of the Com. Law*, 38, 9.

But now the military are ordered and governed by the annual acts of parliament against mutiny and desertion, and by articles of war framed by his majesty from time to



time, in pursuance of the power given unto him by the said acts.

MASTER. See SERVANT.

MAUNDAY THURSDAY, *mandati dies*, the day next before *Good Friday*, wherein is commemorated and practised the *command* of our Saviour in washing the feet of the poor, or doing other acts of humility.

MAYHEM, or *maibem*, signifies a maim or wound, and consists in violently depriving another of the use of a member, proper for his defence in fight. This is a battery, attended with this aggravating circumstance, that thereby the party injured is for ever disabled from making so good a defence against future external injuries, as he otherwise might have done. Amongst these defensive members are reckoned not only arms and legs, but a finger, an eye, and a foretooth, and also some others: but the loss of one of the jaw-teeth, the ear, or the nose, is not *mayhem* at common law, as they can be of no use in fighting. 3 *Black.* 121.

MAYOR, *major*, is the chief magistrate in a city or town corporate; who hath under him aldermen, common council, and officers of divers kinds.

Though a man be mayor of a corporation, it doth not follow that he is a justice of the peace; for there must be a particular grant in the charter: and, in several of the ancient corporations, there were mayors long before the institution of the office of a justice of the peace.

But although he be not a justice of the peace by charter, yet there are many cases wherein he hath the same power given unto him by particular statutes; as in the case of convicting an offender for swearing, drunkenness, and such like.

MEASURE, is a certain quantity or proportion of any thing. There are three different measures, one for wine, one for beer and ale, and one for corn. In the measure of wine; 8 pints make a gallon, 8 gallons a firkin, 16 gallons a kilderkin, half barrel, or rundlet; 4 firkins a barrel, 2 barrels a hogshead, 2 hogsheads a pipe, 2 pipes a tun.—In corn measure; 8 pounds or pints of wheat make a gallon, 2 gallons a peck, 4 pecks a bushel, 4 bushels a sack, and 8 bushels  
2 quar-

a quarter.—In other measure; 3 barley corns in length make an inch, 12 inches a foot, 3 feet and 9 inches an ell, 16 feet and an half a perch, poll, or rod.

**MEDICINES.** By the 25 G. 3. c. 79. a duty is imposed on medicines, (as set forth in a schedule annexed to the act,) the compounding or mixing whereof is unknown, and in which the person compounding or vending the same, claims some secret art.

And every person uttering or vending such medicines, shall take out a licence annually from the stamp office.

**MEDIETAS LINGUÆ**, is a jury or inquest impanelled, where one of the parties to a suit is an alien; consisting of one half denizens, and the other half aliens, if so many be forthcoming in the place. But where both parties are aliens, the jury shall all be denizens. Also this doth not hold in treasons; aliens being very improper judges of the breach of allegiance: nor in the case of *Egyptians*, under the statute 22 Hen. 8. c. 10.

**MELIUS INQUIRENDUM**, is a writ that lies for a second inquiry, where partial dealing is suspected; and particularly of what lands or tenements a man died seized, on finding an office for the king. So a *melius inquirendum* shall be awarded out of the king's bench, where the coroner's inquisition is unsatisfactory.

**MEMORY**, time of, is ascertained by our law, from the time of the transference of king *Richard* the first to the holy land. And any custom may be destroyed by evidence of its non-existence, in any part of that long period from the reign of king *Richard* the first to the present time. 2 *Black.* 31.

**MENIAL SERVANT**, (from *mania*, the walls of a castle, house, or other place,) a domestic servant, who lives under his master's roof.

**MERCHANT**, (*mercator*,) is one that trades in wares of any kind; and is not restricted to those only who traffic in the way of commerce, by importation or exportation. 1 *Salk.* 445.

Merchants have a particular system of customs, called the custom of merchants, or *lex mercatoria*; which custom, how-

ever different from the general rules of the common law, is yet ingrafted into it, and made a part thereof; being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions. And the judges are to take notice of it, without requiring witnesses to prove it. 1 *Black.* 75. *Burrow Mansf.* 1669.

By *magna charta* it is provided, that all merchants (unless publicly prohibited before-hand) shall have safe-conduct to come into and tarry in *England*, for the exercise of merchandize, without any unreasonable imposts, except in time of war; and, if a war breaks out between our country and theirs, they shall be attached (if in *England*) without harm of body or goods, till the king, or his chief justiciary, be informed how our merchants are treated in the land with which we are at war; and if ours be secure in that land, they shall be secure in ours. But in time of war, no subject of a nation with whom we are at war can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods or merchandize from one place to another, without danger of being seized by the king's subjects, unless he hath letters of safe-conduct, which by divers ancient statutes were to be granted under the great seal; but now passports, under the king's sign manual, or licences from his ambassadors abroad, are usually obtained, and are allowed to be of equal validity. 1 *Black.* 260.

MERCHENLAGE, was the law of the ancient kingdom of *Mercia*, in the counties next adjoining to *Wales*; as the *Saxonlage* was the law introduced into this kingdom by the Saxons, and the *Danelage* was that introduced by the Danes. And from these seem partly to be derived that which is now known by the name of the common law. 4 *Black.* 412.

MERCHET, *merchetum*, was a pecuniary payment to the lord, in compensation of his privilege of lying with his tenant's wife the first night after marriage. This custom prevailed in *Scotland* until abolished by king *Malcolm* the third. And perhaps from hence arose the close affinity and connection in the clanships; forasmuch as the eldest child might have a sort of presumptive right to look upon the lord as his or her father: and so the whole clan might esteem themselves as kindred one with another. In the northern parts of *England* also, it is said, this custom was in use; and seems to have been carried by the ancient Britons into *Wales*,  
and

and from them to have received its denomination: the sum paid to the lord, upon the marriage, being called in the British language *gwahr-merched*, the maid's fee.

**MERGER**, to *sink*; as when a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately *merged*; that is, sunk or drowned in the greater. Thus, if there be tenant for years, and the reversion in fee simple descends to, or is purchased by him, the term of years is merged in the inheritance, and shall never exist any more. But they must come to one and the same person, in one and the same right; therefore, if he who has the reversion in fee, marries the tenant for years, this is no merger; for he has the inheritance in his own right, and the term of years in the right of his wife. 2 *Black.* 177.

**MESNE** lords, are those who hold lordships or manors under some superior lord, who is called the lord paramount. When the great barons, who held of the king as their superior lord, granted out portions of their lands to inferior persons, they became also lords with respect to those inferior persons, as they were still tenants with respect to the king; and thus, partaking of a middle nature, they were called *mesne*, or middle lords: the tenants held of them immediately, and mediately of the king. 2 *Black.* 59.

There is also a *writ of mesne*, which lies where the tenant is distrained by the superior lord, for the rent or service of the mesne lord, who ought to acquit him to the superior lord; in which case, if the mesne lord appear not, he shall lose the service of the tenant, and the tenant shall immediately become tenant to the chief lord: also in such case, the tenant may by writ recover damages, and the mesne lord be compelled to pay the rent and do the services. *T. L.*

**MESNE PROCESS**, is sometimes put in contradistinction to *original* process, and in that sense it signifies an intermediate process, which issues pending the suit, upon some collateral interlocutory matter, as to summon juries, witnesses, and the like: sometimes it is put in contradistinction to *final* process, or process of *execution*; and then it signifies all such process as intervenes between the beginning and end of a suit. 3 *Black.* 279.



MESSUAGE, is properly a dwelling-house, with some adjacent land assigned to the use thereof.

METHEGLIN, an old British drink made of honey.

MICEL GEMOT, the great council or assembly of the realm, sometimes called the *witena gemot*, or assembly of wise men; in after times denominated the parliament.

MILES, a soldier, is particularly applied in our law to the order of knighthood; because the knights formed the most considerable part of the royal army, in virtue of their tenure; one condition whereof was, that every one who held a knight's fee (which in *Henry* the second's time amounted to 20*l.* a year) was obliged to be knighted, and attend the king in his wars, or make fine for his non-compliance.

MILITIA. The number of private militia men throughout the kingdom (exclusive of the city of *London*, the *Tower hamlets*, and the *Cinque ports*) is 30,440, who are under the direction of the lieutenants of the several counties, appointed by his majesty; which lieutenants are to appoint deputy lieutenants and commission officers; unto whom the justices of the peace in many respects shall be assistant.

Which militia are to be trained and exercised twenty-eight days in every year; during which time, the provisions, in any of the acts against mutiny and desertion, shall be in force, with respect to the officers and private men; yet so as not to extend to life or limb.

And in case of invasion or actual rebellion, they may be drawn out into actual service, and put under the command of such general officers as his majesty shall appoint; but not to be carried out of the island of *Great Britain* upon any account whatsoever.

MILL. The *toll* of a mill must be regulated by custom; and if the miller takes more than the custom, it is extortion: but if it is a new mill, there the miller is not restrained to any certain toll; but they who will have their corn ground there, must comply with the miller's demand; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties. *L. Raym.* 149.

In some manors; the *tenants* owe fuit and service to the lord's mill; the foundation whereof seems to have been, that the lord erected the mill for the use of his tenants, and for their convenience, on condition that, when erected, they shall all grind their corn there only: in which case, if they withdraw their fuit, the lord may have an action, and recover damages. And a new erected house within the precinct, is within the custom of multure; and none may grind elsewhere, but in case of excessive toll, or that the grist cannot be ground in convenient time. *Hardr.* 177.

By the common law, *tithe* is due of mills: but it is only a personal tithe, and payable out of the clear gain, after all manner of charges and expences deducted. 2 *P. Will.* 463.

By the 9 *G. 3. c. 29.* if any person or persons, riotously and tumultuously assembled, shall demolish or pull down, or begin to demolish or pull down, any wind saw mill, or other wind-mill, or any water-mill or other mill, or any of the works thereto belonging; or if any person shall wilfully or maliciously burn or set fire to any such mill, he shall be guilty of felony, without benefit of clergy.

#### MINES :

1. By the old common law, if gold or silver be found in mines of base metal, according to the opinion of some, the whole was a royal mine, and belonged to the king; though others held that it only did so, if the quantity of gold or silver was of greater value than the quantity of base metal: but now, by the statutes of 1 *W. c. 30.* and 5 *W. c. 6.* this difference is made immaterial; it being enacted, that no mine of copper, tin, iron, or lead, shall be deemed a royal mine, notwithstanding gold or silver may be extracted from them in any quantities: but that the king, or persons claiming royal mines under his authority, may have the ore of any mine, (other than tin ore, in the counties of *Devon* and *Cornwall*,) paying to the proprietor of the mine, within thirty days after the ore shall be laid upon the bank, and before the same shall be removed from thence; for all copper ore washed and made clean and merchantable, 16*l.* a tun; tin ore, 40*s.* a tun; iron ore, 40*s.* a tun; lead ore, 9*l.* a tun. And, in default of payment, the owner may dispose thereof.

2. If a man hath land, in which there is a mine of coals or the like, and maketh a lease of the land, without mentioning any mines; the lessee, for such mines as were open

at the time of the lease made, may dig and take the profit thereof: but he cannot dig for any new mine, which was not open at the time of the lease made, for that would be adjudged waste. 1 *Inst.* 54.

3. Coal mines by name are rateable to the poor, by the 43 *El. c. 2.* but other mines are not: and the reason of the difference seems to be, that coals are a more certain produce, being not attended with so much hazard as the other. *Burr. Mansf.* 1341.

4. If a person breaks up mines which he ought not to do, or threatens to break them up, this is a reason for applying to a court of equity for an injunction. 2 *Atk.* 182.

Digging mines in glebe lands is not waste: otherwise no mines in glebe lands could ever be opened. 1 *Lev.* 107.

5. If any person shall wilfully set on fire any mine, pit, or delph of coal, or cannel coal, he shall be guilty of felony, without benefit of clergy. 10 *G. 2. c. 32.*

6. If any person shall divert or convey any water into any coal work, with design to destroy or damage the same, he shall pay to the party grieved treble damages. 13 *G. 2. c. 21.*

7. If any person shall wilfully or maliciously set fire to, burn, demolish, pull down, or otherwise destroy or damage any fire engine, or other engine erected for draining water from collieries, or for drawing coals out of the same; or for draining water from any mine of lead, tin, copper, or other mineral; or any bridge, waggon way, or trunk, erected for conveying coals from any coal mine, or staith for depositing the same; or any bridge or waggon way erected for conveying lead, tin, copper, or other mineral from any such mine; or cause or procure the same to be done; he shall be guilty of felony, and transported for seven years.

**MUNIMENTS**, or *muniments*, (from *munio*, to defend,) are the evidences and writings concerning a man's possession or inheritance, whereby he is enabled to defend the title of his estate. *T. L.*

**MINSTREL**, in the laws against vagrants, signifies an itinerant musician, wandering about the country in a state of strolling and idleness. Anciently it was usual for lords and great men to retain minstrels in their own houses, but they were not permitted to go abroad. By an act 14 *El. c. 5.* all common players in interludes, and minstrels, not belonging to

to any baron of this realm, or person of higher degree, wandering abroad, and not having the licence of two justices, were to be deemed rogues and vagabonds. Afterwards, in subsequent vagrant acts, the licence by the justices was left out. And by one of *Cromwell's* ordinances in 1656, it was more explicitly declared, that if any person or persons, commonly called fiddlers, or minstrels, should be taken playing, fiddling, and making music, in any inn, ale-house, or tavern, or proffering themselves, or intreating any persons to hear them to play or make music; every such person should be adjudged a rogue, vagabond, and sturdy beggar. And minstrels are prohibited by the present vagrant act, 17 G. 2. c. 5. But there hath been all along an exception of the heirs or assigns of *John Dutton* of *Dutton* in the county of *Chester*, Esquire, concerning their privilege of licensing minstrels within that county.

**MISADVENTURE**, when applied to homicide, is, where a man is doing a lawful act, without intent of hurt to another, and death casually ensues. As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by; or, where a person, qualified to keep a gun, is shooting at a mark, and undesignedly kills a man; for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting his child, a master his apprentice or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only misadventure; for the act of correction was lawful: but if he exceeds the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensues, it is manslaughter at least, and in some cases (according to the circumstances) murder; for the act of immoderate correction is unlawful. 4 *Black.* 182.

**MISCONTINUANCE**, is where a suit is continued by an improper process. In every action, whether civil or criminal, the process ought to be continued from day to day, from its commencement to its conclusion, without any the least gap or chasm; and the suffering any such gap or chasm is called a *discontinuance*; and the continuing of the suit by improper process, as by a *capias* instead of a *distringas*, or giving the parties an illegal day, is properly called a *miscontinuance*. And as a cause is *discontinued*, where either nothing is done to continue it, or nothing but what is void in law; so it is properly



properly said to be *miscontinued*, where it is continued amiss, or by an erroneous and not void continuance. 2 *Harv.* 299.

**MISDEMEANOR**, in its usual acceptation, is applied to all those crimes and offences for which the law hath not provided a particular name; and it may be punished, according to the degree of the offence, by fine, or imprisonment, or both.

**MISE**, is a word of art appropriated to a writ of right; so called because both parties have put themselves upon the mere right, to be tried by grand assise or by battel; so as that which in all other actions is called an issue, in a writ of right in that case is called a *mise*: but if a collateral point is to be tried in a writ of right, it is called an issue. It is derived of the word *missum*, for that the whole cause is put upon this point. It is also taken for expences, as *mise et custagia*. And sometimes it signifieth a customary grant to the king or lords marchers of *Wales* by their tenants at their first coming to their lands. 1 *Inst.* 294. 2 *Inst.* 528.

**MISNOMER**, is the using one name for another.—In cases of misnomer, where there is an original issued against a man, or a bill of indictment exhibited against him, by a wrong christian name; if proceedings were had upon that writ or indictment, they could not finally affect him. If he was to be arrested by process upon such writ or indictment, he might have an action of trespass and false imprisonment against the officer; nay, if he made opposition, and killed him, it would be but manslaughter. But notwithstanding all this, to prevent any possible danger to this man's liberty or property, though he could not effectually be hurt by it, the law allows him time to come in and plead that misnomer to the writ or bill, and it shall abate for that reason, and the defendant not be put to answer, though he is in court, *Str.* 156.

Regularly, it is requisite that a purchaser be named by the name of baptism and his surname, and that special heed be taken to the name of baptism, for that a man cannot have two names of baptism, as he may have divers surnames. Yet in some cases, though the name of baptism be mistaken, the grant is good. Thus a *wife* is a good name of purchase, without a christian name; and so it is, if a christian name be added and mistaken, as *Em* for *Emelyn*. So if lands be  
given

given to *Robert* earl of *Pembroke*, where his name is *Henry*, or to *George* bishop of *Norwich*, where his name is *John*; for in these and the like cases there can be but one of that dignity or name. And therefore such a grant is good, albeit the name of baptism be mistaken. 1 *Inst.* 3.

If the defendant omits to plead a misnomer, he may be taken in execution by the wrong name. *Str.* 1218.

If there be a corporation aggregate, as mayor and commonalty, dean and chapter, the mayor or dean need not be named by his christian name, because that such a corporation standeth in lieu both of the christian name and surname. 2 *Inst.* 666.

A grant to one who is an esquire, by the name of such an one knight, is void; because knight is part of the name of a man, as much as his christian name. *L. Raym.* 303.

A bastard, after he hath gained a name by reputation, may purchase by his reputed name. 1 *Inst.* 3.

A woman was indicted by the name of *Elizabeth Newman*, alias *Judith Hancock*, and it was quashed for that reason; because a person cannot have two christian names. *L. Raym.* 562.

**MISPLEADING.** If in pleading any thing be omitted which is essential to the action or defence; as if the plaintiff doth not merely state his title in a defective manner, but sets forth a title that is wholly defective in itself; or if to an action of *debt* the defendant pleads *not guilty*, instead of *nil debet*; this mispleading is fatal, and cannot be cured by verdict. 3 *Black.* 395.

**MISPRISION**, (a term derived from the old French *mespris*, a neglect or contempt,) is generally understood to be of all such high offences as are under the degree of capital, but nearly bordering thereon: and it is said, that a misprision is contained in every treason and felony whatsoever; and that, if the king so please, the offender may be proceeded against for the misprision only. 4 *Black.* 119.

Misprision of *treason* consists in the bare knowledge and concealment of treason, without any degree of assent thereto; for any assent makes the party a principal traitor. This concealment becomes criminal, if the party apprized of the treason doth not, as soon as conveniently may be, reveal the same to a magistrate. *Id.* 120.

Misprision

Misprision of *felony* is also the concealment of a felony which a man knows, but never assented to; for, if he assented, this makes him either principal or accessary. And the punishment of this, in a public officer, by the statute 3 *Ed. 1. c. 9.* is imprisonment for a year; in a common person, imprisonment for a less, discretionary, time; and, in both, fine and ransom at the pleasure of the court. *Id.* 121.

MISUSER, is an abuse of any liberty or benefit. A charter of a corporation may be forfeited by misuser; so also an office, either public or private; as if a judge takes a bribe, or a park-keeper kills deer without authority. 2 *Black.* 153.

MITTIMUS, is a writ for removing and transferring records from one court to another: and is also a precept in writing, under the hand and seal of a justice of the peace, directed to the gaoler, for the receiving and safe keeping of an offender, until he is delivered by law. 2 *Inst.* 590.

MIXT TITHES, are those which arise not immediately from the ground, but from things immediately nourished by the ground; as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chickens, milk, cheese, eggs.

MODUS DECIMANDI is, when lands, tenements, or some annual certain sum, or other profit, hath been given, time out of mind, to a parson and his successors, in full satisfaction and discharge of tithes in kind in such a place. 2 *Co.* 47. For which, see TITHES.

MOIETY, is the half of any thing.

MOLENDINUM, a mill, *secta ad molendinum*, is a writ that lies, where a man, by usage, time out of mind, hath ground his corn at the mill of a certain person, and afterwards goeth to another mill with his corn, thereby withdrawing his suit to the former; and this writ lies especially for the lord against his tenants, who hold of him to do suit at his mill. But now remedy in this and the like cases is commonly turned into an action upon the case.

MONETAGIUM, a mintage, or privilege of minting or coining money. It also signified a certain tribute paid by the tenants

tenants every third year, to such of the lords as had the privilege of coinage. For anciently divers lords of manors, and others, had the privilege of coining money; but this was usually done by special grant from the king, or by prescription, which supposes one; and therefore was derived from, and not in derogation of, the royal prerogative. Besides that they had only the profit of the coinage, and not the power of instituting either the impresson or denomination, but had usually the stamp sent them from the exchequer. 1 *Black.* 277.

MONEY, is said to be the common measure of all commerce throughout the world, and consists principally of three parts; the material whereof it is made, being gold or silver; the denomination or intrinsic value, given by the king, by virtue of his prerogative; and the king's stamp thereon, for as wax is not a seal without a print, so metal is not money without an impresson. 1 *Inst.* 207. 1 *Hale's Hist.* 188.

In order to fix the value, the weight and fineness of the metal are to be taken into consideration. When a given weight of gold and silver is of a given fineness, it is then of the true standard, and called sterling metal; and of this sterling metal all the coin of the kingdom must be made, by the statute 25 *Ed.* 3. *st.* 5. *c.* 13. And no person can be enforced to take in payment any money but of gold or silver, except of sums under sixpence. And by the statute 14 *G.* 3. *c.* 42. no tender of payment in silver money, exceeding 25*l.* at one time, shall be a sufficient tender in law, for more than its value by weight, at the rate of 5*s.* 2*d.* an ounce. 1 *Black.* 278. 2 *Inst.* 577. 1 *Hale's Hist.* 195.

The king may, by his proclamation, legitimate foreign coin, and make it current money of this kingdom, according to the value imposed by such proclamation; and therefore both *English* money, coined by the king's authority, and foreign money made current by proclamation, are within the denomination of lawful money of *England*. But of this latter sort there is none at present in *England*; *Portugal* money being only taken by consent, as approaching nearest to our standard, and falling in tolerably well with our divisions of money into pounds and shillings; but no person is obliged to take it. 1 *Hale's Hist.* 192. 1 *Black.* 278. 4 *Black.* 89.

Any piece of money coined is of value according to the proportion it bears to other current money, and that without proclamation. And though there is no act of parliament or order



order of state for *guineas* as they are taken, yet being coined at the mint, and having the king's impression, they are lawful money, and current at the value for which they were coined. In legal proceedings, they should be described as *pieces of gold called guineas, of such a value.* 5 *Mod.* 7. *Carth.* 255.

*Money paid into court* is, where the defendant partly confesses the action, and pleads a tender, or offers payment, of what he acknowledges to be due. In which case, he usually pays into the hands of the proper officer of the court as much as he acknowledges due to the plaintiff, together with the costs hitherto incurred, (but if he pleads a tender before the action brought, then without costs,) in order to prevent the expence of any farther proceedings. If, after the money paid in, the plaintiff proceeds in his suit, it is at his own peril; for, if he doth not prove more due than is so paid into court, he shall be nonsuited and pay costs to the defendant; but he shall still have the money so paid in, for that the defendant has acknowledged to be his due. 3 *Black.* 304.

**MONKS**, from *monos, solus*, were originally persons that led a solitary life, having retired from the world by reason of the persecutions which attended the first ages of the church, and lived in desarts and places most private and unfrequented, in hopes to find that peace and comfort among beasts which were denied them amongst men. And this being the case of some very extraordinary persons, their example gave so much reputation to retirement, that the practice was continued, when the reason ceased which first began it. And after the empire became christian, instances of this kind were numerous; and those whose security had obliged them to live separately and apart, became afterwards united into societies, and the places where they agreed to live together under certain rules and orders were called *monasteries*.

**MONOPOLY**, is a licence or privilege allowed by the king, for the sole buying, selling, making, working, or using of any thing; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before. These monopolies were carried to an enormous height during the reign of queen *Elizabeth*, and in the former part of the reign of king *James* the first, but were in a great measure remedied by the statute 21 *Ja. c. 3.* which declares such monopolies to be contrary to law and void; except as to patents, not exceeding the grant of 14 years, to the authors of  
new

new inventions, and some other particular exceptions: and monopolists are punished with forfeiture of treble damages and double costs, to those whom they attempt to disturb; and if they procure any action, brought against them for these damages, to be stayed by any extrajudicial order, other than of the court wherein it is brought, they incur a *præmunire*. 4 *Black.* 159.

**MONTH.** There are in common use two ways of calculating months, either as *lunar*, consisting of twenty-eight days, the supposed revolution of the moon, thirteen of which make a year; or, as *calendar* months, of unequal lengths, commencing on the first day of the calends of each month, whereof in a year there are only twelve. A month in law is a lunar month, or twenty-eight days, unless otherwise expressed; not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks. Therefore a lease for twelve months is only for forty-eight weeks; but if it be for a twelve-month, in the singular number, it is good for the whole year. 2 *Black.* 141.

But in ecclesiastical matters, as in case of the lapse of livings, or the time for bringing prohibitions, the rule for the calendar months is observed. 3 *Atk.* 346.

**MONUMENT,** or tombstone, in a church or church-yard, descends to the heir, in nature of an heir loom. And if any person takes away or defaces the same, he is liable to an action from the heir. And if any one steals the shroud of a dead body, it is felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. 2 *Black.* 429.

**MOOR GAME.** Besides the general penalties for destroying the game, it is enacted by the 13 G. 3. c. 55. that no person shall kill, sell, buy, or have in his possession any heath fowl, commonly called *black game*, between Dec. 10. and Aug. 20. nor any grouse, commonly called *red game*, between Dec. 10 and Aug. 12. on pain of forfeiting, for the first offence, not exceeding 20*l.* nor less than 10*l.*; for the second and every subsequent offence, not exceeding 30*l.* nor less than 20*l.*

And by the 13 G. 3. c. 18. if any person shall kill any moor game or heath game in the night time, or on a *Sunday* or *Christmas-day*, he shall incur the like forfeiture for the

first

first and second offence, and for the third offence he shall forfeit 50 l.

**MORT D'ANCESTOR.** An assise of *mort d'ancestor* is a writ that lieth where, after the decease of a man's immediate ancestor, as where his father, mother, brother, sister, uncle, aunt, nephew, or niece, die seised, a stranger abateth; in which case, if the demandant proves these particulars, and that he is the next heir, he will have judgment to recover possession. 1 Inst. 159. a.

But this course of proceeding is seldom used; the remedy being rendered now more easy by ejectment.

### MORTGAGE:

1. *Mortgage, what.*
2. *Of the estate which the mortgagee hath in the premises.*
3. *Mortgage a personality.*
4. *Of purchasing in a prior incumbrance.*
5. *Of proportioning between tenant for life and the remainder man.*
6. *Of re-entry on payment or tender.*
7. *Account to be made by the mortgagee.*
8. *Of the equity of redemption.*
9. *Of foreclosure.*

#### 1. *Mortgage, what.*

ESTATES held in *vadio*, in *gage*, or pledge, are of two kinds; *vivum vadium*, or living pledge; and *mortuum vadium*, dead pledge, or mortgage.

*Vivum vadium*, or living pledge, is when a man borrows a sum of money of another, and grants him an estate to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void, as soon as such sum is raised. And in this case, the land or pledge is said to be living; it subsists and survives the debt; and, immediately on the discharge of it, results back to the borrower. 2 Black. 157.

He that mortgages or pawns, is called the *mortgagor*; and he to whom the mortgage or pawn is made, is called the *mortgagee*.

*Mortuum vadium*, a dead pledge, or *mortgage*, (which is much more common than the other,) is, where a man borrows of another a specific sum, and grants him an estate in fee, on condition that if he, the mortgagor, shall repay to the mortgagee the said sum on a certain day mentioned in the deed, that then the mortgagor may re-enter on the estate so granted in pledge; or, as is now the more usual way, that the mortgagee shall reconvey the estate to the mortgagor; in this case, the land which is so put in pledge is, *by law*, in case of non-payment at the time limited, for ever dead and gone from the mortgagor; and the mortgagee's estate in the land is then no longer conditional, but absolute. *Ibid.*

But as it was formerly a doubt, whether by taking such estate in fee it did not become liable to the wife's dower and other incumbrances of the mortgagee, (though that doubt has been long ago over-ruled by the courts of equity,) it is therefore become usual to grant only a long term of years, by way of mortgage, with condition to be void on repayment of the mortgage money: which course hath been since continued, principally because, on the death of the mortgagee, such term becomes vested in his personal representative, who alone is entitled in equity to receive the money lent, of whatever nature the mortgage may happen to be. *Ibid.*

As a man may make a feoffment in fee in mortgage, or a lease for a term of years, so he may make a gift in tail, or a lease for term of life in mortgage. *Litt. sect. 333.*

If a man mortgageth his goods, chattels, and debts for a valuable consideration, and the mortgagee permits the mortgagor to keep possession, and to have the ordering, selling, and disposing thereof, this is fraudulent against creditors; and if the mortgagor becomes bankrupt, the mortgagee shall only come in for his proportionable share under the commission: for the mortgagee of goods moveable and things in action is the true owner thereof; and therefore they ought to be delivered to him as much as they may or possibly can be; that is to say, by delivering the goods themselves specifically, or the key of the warehouse wherein they are, with the possession thereof, and by delivering the muniments, books, and writings relating to the things in action, and enabling the mortgagee to reduce the same into possession by action or suit. *1 Will. 260.*

If a copyholder in fee surrenders to the use of the mortgagee in fee, and before presentment in the lord's court be-



comes bankrupt, though this surrender is void in law for want of a presentment, yet the surrender binds the land in equity, and the assignee of the bankrupt shall not be in a better case than the bankrupt himself, who was by this surrender bound in equity. 2 Salk. 449.

2. *Of the estate which the mortgagee hath in the premises.*

A MORTGAGEE is esteemed in possession on executing the mortgage deed; and if the mortgage money be not paid, whereby the land is forfeited, he may bring ejectment without actual entry. 2 Lil. Abr. 203.

The mortgagee, with regard to the inheritance, is a trustee for the mortgagor till a foreclosure. 2 Bac. Abr. 83. 1 Atk. 605.

Where the mortgagee of a leasehold estate hath not covenanted, that he will procure the *lives* to be filled up, the mortgagee may do it; and on adding the expence of renewal to the principal of the mortgage, it shall carry interest. 3 Atk. 4.

Where the mortgagor, being in possession, commits *waste*, he may be restrained by injunction; for the whole estate is a security.—So if the mortgagee cuts down timber, and doth not apply the money arising from the sale, in sinking the interest and principal, the mortgagor may have an injunction to stay waste. 3 Atk. 210. 723.

A mortgagee cannot present on an *avoidance* of a church, because it doth not lessen his debt. 9 Mod. 2. 3 Atk. 559.

If a mortgagor, retaining the possession, levies a *fine* to a second mortgagee; this shall not bar the first mortgagee.—So a fine levied by the mortgagee, and five years non-claim, will not bar the mortgagor of his equity of redemption. 1 Lev. 272. 1 Vern. 152.

A mortgagor in possession is not liable to account for the rents and profits to the mortgagee; for he ought to take the legal remedy to get into possession. 3 Atk. 244.

Where a mortgage is assigned with the concurrence of the mortgagor, the interest paid to the mortgagee by the assignee shall be taken as principal, and carry interest; but where it is assigned without the consent of the mortgagor, the assignee must take it only upon the same terms with the assignor. 3 Atk. 271.

3. *Mortgage a personalty.*

If there is a mortgage in fee, and two descents cast, and there is more due on it than the value of the land, and though

the mortgagor says he will not redeem; yet it shall go to the executor, and not to the heir, the equity of redemption not being foreclosed nor released. 2 *Vern.* 367.

If the heir of the mortgagee forecloses the mortgagor, yet the land shall go to the executor, unless the heir thinks fit to pay him the mortgage money; and then he may have the benefit of the mortgage. 2 *Vern.* 67.

So a devise of all a man's goods and mortgages to his executors is a good devise, and will pass all the lands mortgaged. *Cro. Car.* 37.

For the estate in land is the same thing as the money due upon it. It will be liable to debts; it will go to executors; it will pass by a will not made and executed with the solemnities required by the statute of frauds; and the assignment of the debt will draw the land after it. *Bur. Mansf.* 978.

If a man mortgage lands, and covenants to pay the money, and dies, the personal estate of the mortgagor shall, in favour of the heir, be applied to exonerate the mortgage: so it is if there was no covenant, if the mortgagor had the money; because it was his debt, and he is bound to make it good, though the land be a defective security. 2 *Salk.* 449.

But this exoneration shall not be allowed, unless there be personal assets sufficient to pay all legacies; for the mortgage shall be paid out of the land if there be not personal assets to pay the legacies: and if by such payment assets fall short, the legatees may make such mortgagee refund. 2 *Salk.* 450.

Also, this exoneration shall not be allowed to a devisee of lands; as where lands were mortgaged, and afterwards devised to *A.* for life, remainder to *B.* in fee, and the devisor makes *A.* executor, and leaves assets sufficient to pay the debts. *B.* prayed, that the assets might go to the payment of the mortgage. But the court took a difference between heir and devisee; that though the heir shall be relieved in such case, yet the devisee shall not; and decreed, that the tenant for life and remainder man should each pay their respective proportions in order to redeem. 1 *Cha. Ca.* 271.

#### 4. Of purchasing in a prior incumbrance.

If lands are thrice mortgaged, the third mortgagee may buy in the first incumbrance to protect his own mortgage; and he shall hold against the second mortgagee, if such se-

cond mortgagee do not satisfy him the money he paid on the first, and also his own money which he lent on the last mortgage. 2 *Ventr.* 338. *Str.* 689.

And the reason is, because the legal estate is in the first mortgagee, and the court will not take away that benefit from him, provided he had no notice of the second at the time he bought in the third. 2 *Atk.* 53.

For the courts of equity never protect purchasers of prior incumbrances, but where such purchasers came in for a valuable consideration without notice of a mesne incumbrance. 2 *Ventr.* 339.

In like manner, a second mortgagee may protect himself, by purchasing an old judgment or statute precedent to the first mortgage; and shall not be impeached in equity, but upon payment of all that is due to him in both respects. 2 *Lil. Abr.* 206. 2 *Vern.* 160. 279.

Where the mortgagee has a bond likewise from the mortgagor, the mortgagor in his life-time may redeem the mortgage, without paying off the bond debt; otherwise it is as to the heir at law, because the moment he redeems the estate, it shall be assets in his hands; and for this reason the court compels him to discharge the bond as well as the mortgage. 2 *Atk.* 53.

A bond may likewise be tacked to a judgment; and the reason is, because the judgment creditor, by virtue of an *elegit*, may bring an ejectment, and hold upon the extended value: and as he has the legal interest in the estate, the court will not take it from him. 2 *Atk.* 53.

If a man hath two real estates, and mortgages both to one person, and afterwards only one of them to a second mortgagee, who had no notice of the first; the court, in order to relieve the second mortgagee, will direct the first to take his satisfaction out of the estate only which is not mortgaged to the second mortgagee, if that is sufficient to satisfy the first mortgage, even though the estates descend to two different persons. For it is a rule in equity, that if a creditor hath two funds, he shall take his satisfaction out of that fund on which another creditor hath no charge. 2 *Atk.* 446.

##### 5. *Of proportioning between the tenant for life and remainder man.*

TENANT for life, out of the annual profits, must keep down the interest: and it is now settled, that, in order to  
redeems

redeem, the tenant for life must pay one third, and the remainder man, or reversioner, two thirds. 1 *Vern.* 70.  
1 *Cha. Ca. King.* 30.

A *jointress*, paying off the mortgage, shall hold over, till she and her executors are repaid with interest. 1 *Vern.* 214.  
1 *Cha. Ca.* 271.

The *widow* of a mortgagor shall not be debarred of her dower and right, unless she legally joined with her husband in the mortgage, or otherwise lawfully barred herself from such her dower or right. 4 & 5 *W. c.* 16. *f.* 4.

#### 6. Of re-entry on payment or tender.

If the mortgagor die before the day of payment, his heir may pay or tender the money; and if the mortgagee refuse to receive it, the heir may enter. Also, the executor or administrator of the mortgagor may pay or make tender. 1 *Inst.* 205, 6.

Although a convenient *time* before sunset be the last time given to the mortgagor to tender, yet if he tender it to the person of the mortgagee at any time of the day of payment, and he refuseth it, the condition is saved for that time. 1 *Inst.* 206.

And he may tender the money in purses or bags, without shewing or telling the same; for he doth that which he ought; namely, to bring the money in purses or bags, which is the usual manner of carrying money; and then it is the part of him that is to receive it, to put it out and tell it. 1 *Inst.* 208.

If no *place* is mentioned in the mortgage deed, at which the money shall be paid, it is not sufficient for the mortgagor to tender it upon the land, but he must seek the mortgagee, if he be then in any other place within the realm of *England*. But otherwise it is of a rent issuing out of land; for, in that case, it is sufficient that the rent be tendered upon the land out of which it issues. 1 *Inst.* 210.

But if the mortgagee be out of the realm of *England*, the mortgagor is not bound to seek him, or to go out of the realm unto him; and for that the mortgagee is the cause that the mortgagor cannot tender the money, the mortgagor shall enter into the land, as if he had duly tendered it according to the condition. 1 *Inst.* 210.

The mortgagee refusing to receive his money upon tender after forfeiture, shall lose his interest from the tender. 1 *Cha. Ca.* 29.



If the mortgagee, before the day of payment, makes his executors and dies, and his heir entereth into the land as he ought; the mortgagor ought to pay the money, at the day appointed, to the *executor*, and not to the heir; unless the condition be, that the mortgagor shall pay the money to the mortgagee, or his heirs; and then it shall be paid to the heir accordingly. *Litt. sect. 339.*

And here note, that the executor doth more represent the person of the testator, than the heir doth that of the ancestor; for though the executor be not named, yet the law appoints him to receive the money; but so doth not the law appoint the heir, unless he be named. *1 Inst. 209, 210.*

But if the condition be, to pay the money to the mortgagee, his heirs or executors, then the mortgagor hath his election to pay it either to the heir or executor. *Id. 210.*

If it be to pay the money to the mortgagee, his heirs or assigns, the mortgagor ought to pay it to the heir and not to the executor: for the executor in this case is not an assign in law; because, by being made executor, the estate is not assigned over to him. *Id. 210.*

But if the mortgagee actually assigns the estate over, the mortgagor in this case may pay the money to the first mortgagee or the second mortgagee at his election; and if the first mortgagee dies, the mortgagor may pay the money either to the heir of the first mortgagee, or to the second mortgagee; for the law will not enforce the mortgagor to take knowledge of the second mortgage, nor of the validity thereof, but at his pleasure; and the first mortgagee and his heirs are expressly named in the condition. *Id.*

A mortgagee may refuse to part with the title deeds till his money is paid; but ought not to deny an inspection of the deeds in his hands, when he hath notice to be paid off. *2 Atk. 332.*

The mortgage money being paid, the mortgagor sued to have the mortgage deed delivered up to him, but not allowed; because then the mortgagor may charge the mortgagee for the profits past. *Toth. 229.*

And if the mortgage deed were given up, this is not sufficient to restore the estate, but there must be a re-conveyance; whereas the giving up a bond is in law an extinguishment of the debt. *1 Salk. 157. 1 Atk. 520.*

By the 7 G. 2. c. 20. in actions at law or ejectments concerning mortgages, no suit in equity being then depending to foreclose or redeem such mortgage, the mortgagor, on tender,

tender, or payment into court, of principal, interest, and costs, shall be discharged; and by rule of court, the mortgagee may be compelled to surrender or re-convey.

7. *Account to be made by the mortgagee.*

A MORTGAGEE in possession is not obliged to lay out money any further than to keep the estate in necessary repair; but if he has expended any sum in supporting the mortgagor's title where it has been impeached, he may add this to the principal, and it shall carry interest. 3 *Atk.* 518.

A mortgagee shall not be allowed for his trouble in receiving the rents of the estate himself; but if an estate lies at such a distance as obliges him to employ a bailiff to receive them, what he paid to the bailiff shall be allowed. 3 *Atk.* 518.

Generally, though interest is in arrear when the mortgage is paid off, a mortgagee shall not have interest for that interest. 2 *Atk.* 332.

A proviso in a mortgage deed, that if interest shall be behind for six months, it shall then be accounted principal and carry interest, is void; for to make interest principal, it is requisite that interest be first grown due; and after that, an agreement concerning it may make it principal. 2 *Salk.* 449.

For an agreement to turn interest upon a mortgage into principal, must be done fairly, and is generally upon the advance of fresh money. 2 *Atk.* 331.

In taking an account from the mortgagee, of the rents and profits of the estate after he has come into possession of it, the court commonly directs annual rents to be made; but not so, in an account of personalty. 2 *Atk.* 410.

8. *Of the equity of redemption.*

THOUGH a mortgage be forfeited, and thereby the estate absolutely vested in the mortgagee at the common law; yet a court of equity will consider the real value of the tenements compared with the sum borrowed. And if the estate be of greater value than the sum lent thereon, they will allow the mortgagor at any reasonable time to recall or redeem the estate, paying to the mortgagee his principal, interest, and costs. This reasonable advantage, allowed to the mortgagors, is called the *equity of redemption*. 2 *Black.* 159.

An equity of redemption is always considered as an estate in the land; for it may be devised, granted, or tailed with remainders,

remainders, and such intail and remainders may be barred by fine and recovery; and therefore cannot be considered as a mere right only, but such an estate whereof there may be a seisin; the person, therefore, entitled to the equity of redemption is considered as the owner of the land, and a mortgage in fee is considered as personal assets. 1 *Atk.* 605.

In order to prevent fraudulent mortgages, it is enacted by the 4 & 5 *W. c.* 16. that "if any person shall borrow any money, and for the payment thereof shall acknowledge any judgment, statute, or recognizance; and afterwards shall mortgage his lands, and not give notice to the mortgagee of such judgment, statute, or recognizance, he shall forfeit his equity of redemption." *f.* 2.

And "if any person having once mortgaged, shall again mortgage without giving notice of the first mortgage to the second mortgagee, he also shall forfeit his equity of redemption." *f.* 3.

Provided, "that the under-mortgagees may redeem the former mortgages, on payment of principal, interest, and costs, to the prior mortgagees." *f.* 4.

#### 9. Of foreclosure.

As the mortgagor hath a right to call on the mortgagee, who hath possession of his estate, to deliver it back, and account for the rents and profits received, on payment of his whole debt and interest; so, on the other hand, the mortgagee may either compel the sale of the estate in order to get the whole of his money immediately, or else call upon the mortgagor to redeem his estate presently, or, in default thereof, to be for ever foreclosed from redeeming the same; that is, to lose his equity of redemption. 2 *Black.* 159.

An *infant* cannot be foreclosed, without a day to shew cause after he comes of age; but the proper way in such cases is, to decree the lands to be sold to pay the debts. 1 *Vern.* 295.

\* It is a rule established in equity, analogous to the statute of limitation, that after *twenty years* possession of the mortgagee, he shall not be disturbed, unless there be extraordinary circumstances; as in the case of *femes covert*, *infants*, and the like. 2 *Ventr.* 340. 3 *Atk.* 313.

In a case before lord *Hardwicke*, *Feb.* 28, 1740, on a bill brought for a redemption after twenty-five years possession, the defendant by his answer submitted to be redeemed, notwithstanding the length of time; lord *Hardwicke* said, he

he saw no colour for the redemption ; but on the defendant's submission, he decreed an account, and ordered the plaintiff to pay in six months, and thereupon the defendant to reconvey ; but in default of the plaintiff's payment as aforesaid, the bill was to be dismissed. 2 *Atk.* 140.

Finally; June 26, 1745, in the case of *Aggas and Pickerell*, a bill was brought to redeem, after the mortgagee had been thirty years in possession. The defendant *pleaded the statute of limitation* in bar, and insisted on the length of time that he had been in quiet possession. Lord *Hardwicke* was in great doubt whether the defendant could plead the statute; for insisting on the length of time against a bill to redeem, is only a kind of equitable bar, and by way of analogy to the statute of limitation. But after a further hearing, and consideration of all the cases, he allowed the plea. 3 *Atk.* 225.

**MORTMAIN**, (*mortua manus*,) is where lands and tenements are given to any corporation, sole or aggregate, ecclesiastical or temporal ; and is called *mortmain*, as coming into a *dead hand* ; because the lords of them could receive nothing of the alienee, any more than from a dead hand, but lost their escheats and services before due to them. 1 *Inst.* 2.

By the 9 G. 2. c. 36. no lands or tenements, or money to be laid out thereon, shall be given for, or charged with, any charitable use whatsoever, unless by deed indented, executed in the presence of two witnesses twelve calendar months before the death of the donor, and inrolled in the court of chancery within six months after its execution, (except stocks in the public funds, which may be transferred within six months previous to the donor's death,) and unless such gift be made to take effect immediately, and be without power of revocation : and all gifts in any other manner or form shall be void. Provided, that this shall not extend to the two universities, or their colleges, or to the scholars upon the foundation of *Eaton, Winchester, and Westminster* ; yet so that no college shall be at liberty to purchase more advowsons, than are equal in number to one moiety of the fellows, or persons usually styled and reputed as fellows ; or where there are none such, then to one moiety of the students upon the respective foundations.

If a man deviseth lands to trustees to be turned into money, and that money to be laid out in a charity, it is not good with-



in the act, for it is an interest arising out of land. So a devise of a mortgage, or of a term for years, to a charity is not good; for the words of the statute are, that the lands shall not be *charged* with any charitable use whatsoever. So also money given to be laid out in lands, is expressly within the statute; but money given generally, is not: and the trustees are not restrained from laying out that money in land, if they think proper, provided that it be not required of them so to dispose thereof by the act of donation.

MORTUARY, seems to have been originally an oblation made at the time of a person's death. In the Saxon times there was a funeral duty to be paid, which was called *pecunia sepulchralis*, and *symbolum animæ*, or the *soul-shot*; which was required by the council of *Ænham*, and enforced by the laws of king *Canute*; and was due to the church which the party deceased belonged to, whether he was buried there or not. *1 Still. 171.*

Dr. *Stillingfleet* makes a distinction between *mortuaries* and *corse presents*: The *mortuary*, he says, was a right settled on the church, upon the decease of a member of it; and a *corse present* was a voluntary oblation usually made at funerals. *Id. 172.*

And it seemeth that, in ancient times, a man might not dispose of his goods by his last will and testament, without first assigning therein a sufficient mortuary to the church. And this, in a constitution of archbishop *Winchelsea*, is called the *principal legacy*; so denominated, saith *Lindwood*, because they who died did bequeath the best or second best of their goods to God and the church, in the first place, and before other legacies. *Lind. 196.*

And in another constitution of the same archbishop, it is enjoined, that if a person, at the time of his death, have three or more quick goods, the first best shall be given to the lord of the fee for a heriot; and the second best shall be reserved to the church where the deceased person received the sacraments whilst he lived. *Id. 184.*

And this was usually carried to the church with the dead corpse. And Mr. *Selden* quotes an ancient record, where it is recited, that a horse was present at the church the same day in the name of a mortuary, and that the parson received him, according to the custom of the land and of holy church. *Seld. Hist. Tith. 287.*

Mortuaries

Mortuaries are recoverable in the spiritual court, unless the matter turn upon the point of custom; and then a prohibition will be granted in order to try the custom at law. *Cro. Eliz.* 151.

The variety of customs with regard to mortuaries, having given frequently a handle to exactions on the one side, and frauds or expensive litigations on the other, it was thought proper by the statute 21 *Hen. 8. c. 6.* to reduce them to some kind of certainty. For which purpose it is enacted, that all mortuaries or corse presents shall be taken in manner following, unless where by custom less or none at all is due: *viz.* for every person who doth not leave goods clear, above his debts paid, to the value of ten marks, nothing; for every person who leaves goods to the value of ten marks, and under 3*ol.* 3*s.* 4*d.*; if above 3*ol.* and under 4*ol.* 6*s.* 8*d.*; if above 4*ol.* ten shillings. And no mortuary shall be paid for the death of a feme-covert; nor for any child; nor for any one of full age, that is not an housekeeper; nor for any wayfaring man, but such wayfaring man's mortuary shall be paid in the parish to which he belongs.

MOTION in court, is an occasional application by the party or his counsel, in order to obtain some rule or order of court, and is usually grounded upon an affidavit of the truth of the suggestion. 3 *Black.* 304.

MOVEABLES, are all such things personal as attend a man's person wherever he goes; in contradistinction to things *immoveable*, as houses and lands. 2 *Black.* 384.

MULIER, hath three significations: 1. It signifieth a woman in general. 2. A virgin. 3. A wife; and this is the most proper and legal signification of it; and a son or daughter, born of a lawful wife, is called *filius mulieratus*, or *filia mulierata*, a son *mulier*, or a daughter *mulier*; and it is always used in contradistinction to a bastard: thus a bastard is an illegitimate issue, and mulier is legitimate. 1 *Inst.* 243.

MUM. By the 27 *G. 3. c. 13.* a duty is imposed on the importation of mum into *Great Britain*, and drawbacks are to be allowed on the exportation thereof, as set forth in a schedule annexed to the act.

And also, by the annual malt act, a duty is imposed on all mum made in, or imported into, this kingdom; which duties  
are

are to be under the management of the commissioners of the customs and excise.

**MURAGE**, *muragium*, is a reasonable toll, to be taken of every cart or horse coming laden through a city or town, for the building or repairing the public walls thereof, due either by grant or prescription. The personal service of the inhabitants and adjoining tenants in building or repairing the walls, was called *murorum operatio*; and when this personal duty was changed into money, the tax so gathered was called *murage*. In the city of *Chester*, there are two ancient officers called *murangers*, being two of the principal aldermen, annually chosen to see the walls kept in good repair; for the maintenance of which, they receive certain tolls and customs.

**MURDER**, is where a man of sound memory, and of the age of discretion, unlawfully killeth any person under the king's peace, with malice forethought, either expressed by the party, or implied by law; so as the party wounded or hurt die of the wound or hurt within a year and a day.  
3 *Inst.* 47.

By malice *express*, is meant a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorised. And the evidences of such a malice must arise from external circumstances, discovering that inward intention; as, lying in wait, menacings antecedent, former grudges, deliberate compassings, and the like; which are various, according to variety of circumstances. 1 *Hale's Hist.* 451.

Malice *implied*, is in several cases; as when one voluntarily kills another, without any provocation: for, in this case, the law presumes it to be malicious, and that he is a public enemy of mankind. Poisoning also implies malice, because it is an act of deliberation. Also, where an officer is killed in the execution of his office, it is murder; and the law implies malice. Also, where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty. And, in general, any formed design of doing mischief may be called malice, and therefore not such killing only as proceeds from premeditated hatred or revenge against the person killed, but also in many other cases, such as is accompanied with those circumstances that shew the heart to be perversely wicked,

wicked, is adjudged to be of malice prepenſe, and confequently murder. 1 *H. H.* 455. 2 *Harw.* 80.

If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them goeth and fetcheth his weapon, and they go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed; for the fetching of the weapon, and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay, though it were the ſame day, if there were ſuch a competent diſtance of time that in common preſumption they had time of deliberation, then it is murder. And the law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party ſlain are likewiſe guilty as acceſſaries. 3 *Inſt.* 51. 1 *Harw.* 82.

By ſtatute 21 *Jac. c.* 27. if a woman be delivered of a baſtard child, and ſhe endeavour privately, either by drowning or ſecret burying thereof, or any other way, either by herſelf, or the procuring of others, ſo to conceal the death thereof, that it may not come to light whether it were born alive or not, but be concealed, ſhe ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs that it was born dead.

If a man have a beaſt, as a bull, cow, horſe, or dog, uſed to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it: if he hath no particular notice that it did any ſuch thing before, yet if it is *feræ naturæ*, as a lion, a bear, a wolf, yea an ape or a monkey, if it get looſe and do harm to any perſon, the owner is liable to an action for the damage: if he have notice of the quality of any ſuch his beaſt, and uſe all due diligence to keep him up, yet he breaks looſe and kills a man, this is no felony in the owner, but the beaſt is a deodand. But if he did not uſe that due diligence, but through negligence the beaſt goes abroad, after warning or notice of the condition, and kills a man, it ſeems to be manſlaughter in the owner: but if he did purpoſely let him looſe or wander abroad, with deſign to do miſchief, nay though it were with deſign only to fright people and make ſport, and it kills a man, it is murder in the owner. 1 *H. H.* 431.

Sentence,



Sentence, in case of murder, shall be pronounced in open court immediately after conviction, in which shall be expressed not only the usual judgment of death, but also the time appointed for the execution, with the marks of infamy directed for such offenders, which time shall be on the day next but one after sentence passed; and in the mean time the prisoner shall be kept alone in some cell apart from the other prisoners, and shall be fed with bread and water only. And after execution, the body shall be dissected and anatomized; and in no case shall be buried, unless after having been so dissected or anatomized. But the judge, if he sees cause, may relax or release any of these restraints or regulations. 25 G. 2. c. 37.

MUTA CANUM, (Fr. *meut de chiens*,) signifies a kennel of hounds. By the ancient law, upon the death of a bishop or abbot, the king is intitled to six things: his best horse or palfrey, with its furniture; his cloak or gown, and tippet; his cup and cover; his bason and ewer; his gold ring; and his *muta canum*, his *mew* or kennel of hounds. 2 *Inst.* 491.

MUTE, *mutus*, is one who is dumb and cannot speak; or, in cases of arraignment for felony, who refuses to speak or make answer. Heretofore, a person standing mute, and thereby refusing to stand to the law, was liable to a strange and severe punishment, called *pain forte et dure*; the judgment in which case was, that the man or woman should be removed to the prison, and laid there in some low and dark room, where they should lie naked on the bare earth, without any litter, rushes, or other covering, and without any garment about them but something to cover their privy parts; and that they should lie upon their backs, their heads uncovered and their feet, and one arm to be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner to be done with their legs; and there should be laid upon their bodies iron and stone, as much as they might bear and more; and the next day following, to have three morsels of barley bread, without any drink; and the second day to drink thrice of the water next to the house of the prison (except running water) without any bread; and this to be their diet until they were dead. 2 *Inst.* 178.

And

And this some persons endured, for the sake of their children or other kindred; because in such case they forfeited their goods only, and not their lands; for lands could not be forfeited but by attainder.

But now, by the 12 G. 3. c. 20. if any person on arraignment for felony or piracy, shall stand mute, or will not answer directly, he shall be convicted of the offence, and suffer in all respects as if he had been convicted by verdict or confession.

And the same law is, with respect to an arraignment for treason or petty larceny; for before this act, persons standing mute in either of these cases, were to have the like judgment as if they had confessed the indictment. 2 *Inst.* 177.

MUTILATION, is the depriving a man of the use of any of those limbs which may be useful to him in fight, the loss whereof amounts to what the law calls *mayhem*. Both the life and limbs of a man are of such high value in the estimation of the law, that it pardons even homicide if committed *se defendendo*, or in order to preserve them. For whatever is done by a man to save either life or member, is looked upon as done upon the highest necessity and compulsion. 1 *Black.* 130.

MUTUAL DEBTS, between the plaintiff and defendant, may be set one against the other, and either pleaded in bar, or given in evidence (after notice) upon the general issue at the trial; which shall operate as payment, and extinguish so much of the plaintiff's demand. 3 *Black.* 305.

MUTUAL PROMISE is, where one man promises to pay money to another, and he in consideration thereof promises to do a certain act. Such promises must be binding as well of the one side as of the other, and both made at the same time. *Hob.* 88. 1 *Salk.* 24.

**NAME.** See MISNOMER.

**NAMIUM**, (*nam, naam, Sax.*) signifies the taking or distraining another person's moveable goods. So *withernam*, (from *wyther*, other,) is another or second distress; which is, when goods distrained are driven out of the county, or otherwise withholden by the distrainer, that the sheriff cannot come at them to make a replevy; in this case, a writ of *withernam* goes, to take as much of the goods of the distrainer, and keep the same, until he make deliverance of the goods first by him distrained.

**NATIVUS**, one that was *born* a villein.

**NATURAL AFFECTION**, is a good consideration in a deed; and if one, without expressing any consideration, covenant to stand seised to the use of his wife, child, brother, or the like; here, the naming them to be of kin, implies the consideration of natural affection, whereupon such use will arise.

**NATURALIZATION**, is where a person who is an alien, is made the king's *natural* subject by act of parliament. Hereby an alien is put in the same state as if he had been born in the king's ligeance, except only that he is incapable of being a member of the privy council, or parliament, and of holding any office or grant. No bill for a naturalization can be received in either house of parliament, without such disabling clause in it; nor without a clause disabling the person from obtaining any immunity in trade thereby in any foreign country, unless he shall have resided in *Britain* for seven years next after the commencement of the session in which he is naturalized. Neither can any person be naturalized, or restored in blood, unless he hath received the sacrament within one month before the bringing in of the bill, and unless he also takes the oaths of allegiance and supremacy in the presence of the parliament.  
1 *Black.* 374.

**NAVAGE**, a duty incumbent on tenants to carry their lord's goods by shipping.

**NAVY:**

## NAVY:

1. For the supply of seamen to furnish his majesty's navy, the practice of *impressing*, and granting powers to the admiralty for that purpose, is of very ancient date, and hath been uniformly continued by a regular series of precedents to the present time: and this power, though not expressly declared by any act of parliament, yet is recognized by several acts of parliament, which do very strongly imply it. The 2 Ric. 2. c. 4. speaks of mariners being arrested and retained for the king's service, as a thing well known, and practised without dispute; and provides a remedy against their running away. By the 2 & 3 P. & M. c. 16. if any waterman, who uses the river *Thames*, shall hide himself during the execution of any commission of pressing for the king's service, he is liable to heavy penalties. By the 2 & 3 An. c. 6. poor apprentices bound to the sea service, shall have a protection from the admiralty from being impressed till they attain eighteen years of age. And by several other statutes, protections are allowed to seamen from being impressed in several particular circumstances. All which statutes fully suppose and imply the legality of pressing; otherwise, they would be nugatory, and in the highest degree absurd. *Foss.* 154. 1 *Black.* 419.

2. For the regulation and government of the officers and seamen belonging to his majesty's navy, particular provision is made by the 22 G. 2. c. 33. Which act, after taking order that public worship shall be duly observed, and prayers and preaching by the chaplain duly performed in each respective ship, goes on to recite particular offences, and enjoin their respective punishments. The offences are of three kinds or degrees; first, such for which the offender shall suffer death; secondly, such for which the offender shall suffer death, or such other punishment as a court martial shall inflict; thirdly, such as do not extend unto death, but are liable only to an inferior punishment.

The crimes against which death is denounced without mitigation, are, holding intelligence with the enemy; treacherously or cowardly yielding or crying for quarter; cowardice, or other neglect in not doing the utmost to take or destroy the enemy's shipping; not assisting or relieving any other of his majesty's ships in view; not pursuing the chase of an enemy beaten or flying; deserting to the enemy, or running away with any ship or stores; making mutinous assemblies on any pretence whatsoever; striking, or offering



to strike, any superior officer; setting fire to any magazine or vessel not belonging to the enemy; committing murder, buggery, or sodomy.

Crimes of a second rate, for which a man shall suffer death, or such other punishment as a court martial shall inflict, are, not acquainting the superior officer with any letter or message sent from the enemy in the nature of a spy; relieving an enemy with victuals, ammunition, or other supply; officer not preparing to fight on signal given, and not personally encouraging the men to fight courageously; not using all possible endeavours in putting the orders of the commanding officer in execution; delaying or discouraging the service, on pretence of arrears of wages, or any other pretence; deserting, or enticing others to desert; not taking care of and defending ships under convoy; uttering words of sedition or mutiny; concealing any traiterous or mutinous practice; quarrelling with a superior officer, or disobeying any of his lawful commands; neglect of steering a ship, whereby the same may come in danger of being stranded; sleeping on watch, or forsaking the station; robbery in the fleet.

Crimes not extending unto death, are profane cursing and swearing; drunkenness; not sending to the admiralty papers found on board prize ships; taking goods out of prize ships before the same shall have been condemned; stripping off their cloaths, pillaging, or otherwise ill using persons taken on board prize ships; behaving with contempt to a superior officer; concealing mutinous words, or being present at any mutiny; stirring up any disturbance about the unwholesomeness of victuals, otherwise than by quietly making the same known to the commanding officer; quarrelling, or using reproachful speeches or gestures; wasting or embezzling the stores. Unto this head also belong those offences of officers, for which the penalty of cashiering is inflicted; which are, entertaining a deserter, and not giving notice to the captain of the vessel to which the deserter belongs; taking goods on board other than for the use of the ship; making or signing false musters; and, in general, behaving in a scandalous, infamous, cruel, oppressive, or fraudulent manner, unbecoming the character of an officer.

Provided always, that no sentence of death (except in cases of mutiny) given by a court martial shall be put in execution, till after report of the proceeding shall have been made.

made to the admiralty if it is within the narrow seas, and elsewhere, to the commander in chief, and their directions given thereupon.

3. No lifted seaman shall be taken out of his majesty's service, by any process, other than for some criminal matter, unless affidavit be first made that the debt or damage amounts to 20*l*. But the plaintiff may enter a common appearance, and have judgment and execution other than against his body. 31 G. 2. c. 10.

4. By the same statute 31 G. 2. c. 10. many useful regulations are made for the punctual, frequent, and certain payment of the wages of seamen employed in the royal navy; and for enabling them more easily and readily to remit the same, for the support of their wives and families.

And personating seamen in order fraudulently to obtain their wages, is felony without benefit of clergy.

5. A seaman may make a nuncupative will without the strict formalities required of others by the 29 G. 2. c. 3. And the probate of the will of a seaman slain or dead in the service, and the certificate of his marriage, shall be exempted from the stamp duty.

6. Seamen, who have been employed in the king's service, may set up trades in any town or place without molestation, except in *Oxford* and *Cambridge*. 22 G. 2. c. 24.

7. If any seaman under the degree of a warrant or commission officer, who entered voluntarily into his majesty's service, shall be killed or drowned in the service, and leave a widow, she shall, on certificate of the marriage by the minister, churchwardens, and overseers of the poor where she resides, receive, from the admiralty, to the amount of one year's wages of her husband. 14 G. 2. c. 38.

NE ADMITTAS, is a prohibitory writ directed to the bishop, at the suit of one who is patron of any church, if he suspects that the bishop will admit the defendant's or any other clerk pending the plea betwixt them: in which case, a writ issues, requiring the bishop *not to admit* (*ne admittas*) any clerk whatsoever to that church, until the right shall be determined. *F. N. B.*

NEATGELD, *neatgelt*, a rent or tribute paid in cattle.

NECESSITY. The law charges no man with default, where the act is compulsory, and not voluntary; and where

there is not a consent and election; and, therefore, if either an impossibility be for a man to do otherwise, or so great a perturbation of the judgment and reason as in presumption of law man's nature cannot overcome, such necessity carrieth a privilege in itself. *Bacon's Max. of the Law.*

Necessity is of three sorts; necessity of conservation of life; necessity of obedience; and necessity of the act of God, or of a stranger. 1. Necessity for conservation of life; as if divers be in danger of drowning by the casting away of some boat or bark, and one of them gets to some plank, or on the boat's side, to keep himself above water, and another to save his life thrusts him from it, whereby he is drowned; this is neither *se defendendo*, nor by misadventure, but it is justifiable homicide. So if divers felons be in a gaol, and the gaol by casualty is set on fire, whereby the prisoner gets forth; this is no escape, nor breaking of prison. 2. Necessity of obedience; as where husband and wife commit a felony, the wife can neither be principal nor accessary; because the law intends her to have no will, in regard of the subjection and obedience she oweth to her husband. 3. Necessity of the act of God, or of a stranger; as if I be tenant for years of an house, and it be overthrown by lightning or tempest, or by sudden floods, or by invasion of enemies; in all these cases I am excused in waste. *Id.*

But then it is to be noted, that necessity privilegeth only as to private rights, and not as to matters concerning the public; thus, if in danger of tempest, those that are in a ship throw overboard other men's goods, they are not answerable; but if a man be commanded to bring ordnance or ammunition to relieve any of the king's towns that are distressed, in such case he cannot for any danger of tempest justify the throwing them overboard; for there it holdeth, which was spoken by the *Roman*, when he alleged the same necessity of weather to hold him from embarking, "It is necessary for me to go, but not necessary for me to live." *Id.*

So if a fire happen in a street, I may justify the pulling down of the wall or house of another man, to save the row from the spreading of the fire; but if I be assailed in my house and distressed, and to save my life I set fire to my house, which spreads and takes hold of the other houses adjoining, this is not justifiable; but I am subject to their action upon the case, because I cannot rescue my own life by doing any thing against the public: but if it had been only a private trespass, as the going over another's ground, or the breaking

of his inclosure when I am pursued, for the safeguard of my life, it is justifiable. *Id.*

**NE EXEAT REGNUM.** Within the realm, the king may command the attendance and service of all his liegemen; but he cannot send any man out of the realm, even upon the public service, except seamen and soldiers, the nature of whose employment necessarily implies an exception. *1 Black. 138.*

By the common law, every man may go out of the realm for whatever cause he pleaseth, without obtaining the king's leave; but if the king, by writ of *ne exeat regnum*, under his great or privy seal, thinks proper to prohibit him from so doing; or if the king sends a writ to any man, when abroad, commanding his return; and in either case the subject disobeys; it is a high contempt, for which the offender's lands shall be seised till he return, and then he is liable to fine and imprisonment. *1 Black. 266. 1 Harw. 22.*

This writ was originally confined to state affairs, and the intent of it was, to prevent any person from going beyond sea, to transact any thing to the prejudice of the king or his government; but now it is very properly used in civil cases, on motion to the high court of chancery. *1 Atk. 521.*

**NEGATIVE**, is the denial of any fact affirmed. A negative, regularly, cannot be proved or testified by witnesses; yet in some cases it may indirectly be proved by something tantamount: as if a man accuses another to have been at *York*, and there to have committed a certain fact, in proof of which he produces several witnesses, here the defendant cannot prove that he was not at *York*, against positive evidence that he was, but he shall be allowed to make out the negative by collateral testimony, that at that very time he was at *Exeter*, or the like, in such a house, and in such company. *Fortesc. 37.*

**NEGATIVE PREGNANT**, is a negative which implies or brings forth an affirmative; and is said to be where a negative carries an affirmative in its belly. Where an action is brought against a man, and he pleads in bar of the action a negative plea, which is not so special an answer to the action, but it includes also an affirmative, this is a negative pregnant: as for instance, he in reversion brings a writ of entry *in casu*



*proviso* upon alienation made by tenant for life, supposing that he has aliened in fee, which is a forfeiture of his estate; if the tenant comes and pleads that he hath not aliened in fee, this is a *negative*, wherein is included an affirmative; for though it be true, that he has not aliened in fee, yet it may be he hath aliened in tail, which is also a forfeiture of his estate. 2 *Lill. Abr.* 212. So if a man, being impleaded to have done a thing on such a day, or in such a place, denies generally (without saying any thing more) that he did it on such a day or in such a place, it is a negative pregnant, as it implies nevertheless that in some sort he did it. *Dyer*, 17.

**NEGLIGENT ESCAPE**, is where a prisoner escapes without his keeper's knowledge or consent. In which case, upon fresh pursuit, the party may be retaken, and the sheriff shall be excused if he has him again before any action brought against himself for the escape. 3 *Black.* 415.

**NEGRO.** See **SLAVERY.**

**NEIF**, *nativa*, is one that was born a villein or bond-woman. Anciently the lords of manors sold, gave, or assigned their bond-men or bond-women, as appears by the following deed of gift: *Sciant presentes et futuri, quod ego Radulphus de C. miles, dominus de L. dedi domino Roberto de D. Beatricem filiam Willielmi H. de L. quondam nativam meam, cum tota sequela sua et omnibus catallis suis et omnibus rebus suis perquisitis et perquirendis: habendam et tenendam predictam Beatricem, cum tota sequela sua, et omnibus catallis suis, et omnibus rebus suis perquisitis et perquirendis predicto domino Roberto vel suis assignatis, libere, quiete, bene, et in pace, imperpetuum. In cuius, &c. Hiis testibus, &c. Datum apud L. in die sancti Laurentii martyris, anno 13 Ed. 3.*

**NE INJUSTE VEXES**, is a writ founded on the statute of *magna charta*, c. 10. that lies for a tenant distrained by his lord, for more services than he ought to perform; and is a prohibition to the lord not *unjustly* to distrain or *vex* his tenant. And this is chiefly where the tenant in fee-simple hath prejudiced himself, by doing greater services, or paying more rent, than he needed to have done; for in this case, by reason of the lord's *feisin*, the tenant cannot avoid it by *awotry*, but is driven to his writ for remedy. *F. N. B.*

NEW

**NEW ASSIGNMENT.** In many actions, where the plaintiff in his declaration hath alleged a general wrong, and the defendant hath put in an evasive plea, the plaintiff in his replication may reduce that general wrong to a more particular certainty, by assigning the injury afresh with all its specific circumstances, in such manner as clearly to ascertain and identify it, consistently with his general complaint; which is called a new or novel assignment. 3 *Black.* 311.

**NEWS PAPERS.** By several statutes, stamp duties are imposed on newspapers.

And by the 29 G. 3. c. 50. newspapers are not to be let out for hire.

### NEW TRIAL:

FORMERLY, the only remedy for reversal of a verdict unduly given, was by writ of *attaint*; in which case the law inflicted a strange and severe punishment upon the jurors, though they erred never so innocently, but gave no relief to the party injured: but this course is now universally and justly exploded, and in the place thereof a new trial is granted. 3 *Black.* 389.

For if every verdict were to be final in the first instance, great injustice might ensue. Oftentimes, in the trial of a cause, the facts are complicated and intricate, the evidence of great length and variety, and sometimes contradictory; and where the nature of the dispute very frequently introduces nice questions and subtilties of law. Either party may be surprised by a piece of evidence, which (had he known of its production) he could have explained or answered; or may be puzzled by a legal doubt, which a little recollection would have solved. In the hurry of a trial, the ablest judge may mistake the law, and misdirect the jury; he may not be able so to state and range the evidence, as to lay it clearly before them; nor to take off the artful impressions which have been made on their minds by learned and experienced advocates. The jury are to give their opinion instantly; that is, before they separate, eat, or drink: and under these circumstances, the most intelligent and best-intentioned men may bring in a verdict, which they themselves, upon cool deliberation, would wish to reverse. 3 *Black.* 389, 90. *Bur. Mansf.* 393.

Granting a new trial, under proper regulations, cures all these inconveniences. But the court will not lend too easy

an ear to every application for a review of the verdict. They must be satisfied that there are strong probable grounds to suppose that the merits have not been fairly and fully discussed, and that the decision is not agreeable to the justice and truth of the case. A new trial is not granted upon nice and formal objections, which do not go to the real merits. It is not granted where the scales of evidence hang nearly equal; for that which leans against the verdict ought always very strongly to preponderate. 3 *Black.* 391, 2.

In like manner, where the cause is extremely frivolous, as for a small trespass where the damages are very inconsiderable, the court will incline not to grant a new trial, although the verdict hath been contrary to the evidence; which denial is even beneficial to the party who prays the verdict to be set aside, for he cannot have a new trial without paying the costs of the former trial, and can expect only very trifling damages. For a new trial ought only to be granted to obtain real justice, and not to gratify litigious passions. *Bur. Mansf.* 11. 54.

And in granting such further trial, the court will provide for supplying such defects as there may be; by laying the party applying under all such equitable terms, as the opposite party shall desire and mutually offer to comply with; such as, the discovery of some facts upon oath, the admission of others, the production of deeds, books, and papers, the examination of witnesses infirm or going beyond sea, and such like. 3 *Black.* 392.

A new trial shall not be granted in *penal* actions, where the verdict is for the defendant, though contrary to evidence; as in perjury, forcible entry, and the like. *Ld. Raym.* 62.

But in many instances, where the jury, in criminal cases, have, contrary to evidence, found the prisoner guilty, their verdict hath been set aside; and a new trial granted by the court of king's bench; but there is no instance of granting a new trial, where the prisoner was acquitted upon the first: therefore, if the jury find the prisoner not guilty, he is forever quit and discharged. 4 *Black.* 355.

On an action for the penalty of killing a hare, not being qualified, the jury found for the defendant, contrary to the direction of the judge; but the court refused to grant a new trial, saying, it had never been carried so far as to a penal action. *Str.* 899.

So verdicts for defendants are never set aside for penalties in the case of duties or customs. *Str.* 1238.

A judge

A judge of an inferior court cannot grant a new trial,  
1 *Salk.* 113.

NIGHT, is when it is so dark that the countenance of a man cannot be discerned. 4 *Black.* 224.

NIGHT WALKERS, are such persons as sleep by day and walk by night, being often pilferers and disturbers of the peace, 5 *Ed.* 3. c. 14. And, by the common law, constables are authorised to arrest night walkers and suspicious persons. Watchmen also may arrest night walkers, and hold them until the morning. And it is said that a private person may arrest any suspicious night walker, and detain him till he give a good account of himself. 2 *Haw.* 61. 80.

NIHIL DICIT, is a failing by the defendant to put in an answer to the plaintiff's declaration by the day assigned; which being omitted, judgment is had against him of course, as *saying nothing* why it should not.

NIL DEBET, is the general plea to the declaration in an action of debt upon contract, whereby the defendant pleads that he *owes nothing*; and thereupon issue is joined. 3 *Black.* 305.

NISI PRIUS, is a commission directed to the judges and clerk of assize, empowering them to try all questions of fact issuing out of the courts at *Westminster* that are then ripe for trial by jury. The original of which name is this; all causes commenced in the courts of *Westminster-hall* are, by the course of the courts, appointed to be tried on a day fixed in some *Easter* or *Michaelmas* term, by a jury returned from the county wherein the cause of action arises; but with this proviso, "*nisi prius*" *justiciarii ad assisas capiendas venerint*; that is, "*unless before*" the day prefixed, the judges of assize come into the county in question, which they always do in the vacation preceding each *Easter* and *Michaelmas* term, and there try the cause; which saves much expence and trouble, both to the parties, the jury, and the witnesses. And then, upon the return of the verdict given by the jury to the court above, the judges there give judgment for the party for whom the verdict is found. 3 *Black.* 59.

But



But in matters of great weight, or where the title is intricate, the judges above will often retain causes to be tried there; and then the jury and witnesses in such cases must come to the courts at *Westminster* for the trial of the cause, which is called a trial at bar. *Wood. b. 4. c. 1.*

Errors before the justices at *nisi prius* shall be redressed in the king's bench, and not in the common pleas. *Id.*

**NOBILITY.** The civil state of *England* consists of the nobility and commonalty. The nobility are all those who are above the degree of knight; namely, dukes, marquesses, earls, viscounts, and barons. 1 *Black. 396.*

**NOLLE PROSEQUI**, is used in the law where a plaintiff in any action will proceed no further, and may be before or after verdict, though it is usually before; and it is then stronger against the plaintiff than a nonsuit, which is only a default in appearance; but this is a voluntary acknowledgment that he hath no cause of action. 2 *Lill. 218.*

**NOMINE PCENÆ**, is a penalty incurred for not paying rent, or the like, at the day appointed by the lease or agreement for payment thereof. 2 *Lill. 221.* If rent is reserved, and there is a *nomine pcenæ* on the non-payment of it, and the rent is behind and unpaid, there must be an actual demand thereof made, before the grantee of the rent can distrain for it, the *nomine pcenæ* being of the same nature as the rent, and issuing out of the land out of which the rent doth issue. *Hob. 82. 133.*

**NON-ABILITY**, is an exception taken against the plaintiff in a cause, upon some just ground, why he cannot commence any suit in law; as *præmunire*, outlawry, excommunication, or the like. *F. N. B.*

**NON-AGE**, in general understanding, is all the time of a person's being under the age of one-and-twenty; and in a special sense, as where a man is under the age of fourteen with respect to marriage, or twelve with respect to taking the oath of allegiance.

**NON ASSUMPSIT**, is a plea in a personal action, whereby a man denies any promise made. The plaintiff, when  
the

the proceedings were in Latin, charged that the defendant *assumpsit*, that is, *assumed*, undertook, or promised to do such a thing; the defendant, in joining issue, pleaded *non assumpsit*, that he did *not assume* or promise to do such thing.

**NON-CLAIM**, is an omission or neglect of one that claims not within the time limited by law, as within a year and a day, where continual claim ought to be made, or in five years after a fine levied.

**NON COMPOS MENTIS**, is where a person is not of sound mind, memory, and understanding; and is of four kinds:

1. Idiots, who are of *non-sane* memory from their nativity, by a perpetual infirmity.

2. They that lose their memory and understanding by the visitation of God; as by sickness or other accident.

3. Lunatics; who have sometimes their understanding, and sometimes not.

4. Drunkards; who by their own vicious act for a time deprive themselves of their memory and understanding. 1 *Inst.* 247.

Idiots and lunatics, who are under a natural inability of distinguishing between good and evil, are not punishable by any criminal prosecution. 1 *Harw.* 2.

But drunkards have no privilege by their want of sound mind; but shall have the same judgment as if they were in their right senses. *Id.*

**NON-CONFORMISTS.** See **DISSENTERS.**

**NON-CUL'**, abbreviated from *non culpabilis*, is a plea of *not guilty* to any action of trespass or wrong in a civil suit, or to an indictment in any matter criminal.

**NON DAMNIFICATUS**, is a plea to an action of debt upon a bond, with condition to save the plaintiff harmless; in which the defendant may plead generally that the plaintiff is not damnified; but if it is to save harmless specially in a particular suit or thing, there the defendant must shew how he hath saved him harmless and indemnified. 2 *Lill.* 224. 1 *Leon.* 72.

**NON DECIMANDO**, is to be free from the payment of tithes, without any recompence for the same. Concerning which,

which, the general rule is, that no layman can prescribe in *non decimando*; that is, to be discharged absolutely of the payment of tithes, and to pay nothing in lieu thereof, unless he begin his prescription in a religious or ecclesiastical person. But all spiritual persons, as bishops, deans, prebendaries, parsons, and vicars, may prescribe generally in *non decimando*. 1 *Roll's Abr.* 653.

And these had their lands capable of being discharged of tithes several ways; as, 1. By real composition, originally made between the owner of the land on the one part, and the parson, patron, and ordinary on the other. 2. By the pope's bull of exemption. 3. By unity of possession; as where the rectory of a parish, and lands in the same parish, both belonged to a religious house, those lands were discharged of tithes by this unity of possession. 4. By prescription; having never been liable to tithes, by being always in spiritual hands. 5. By virtue of their order; as the knights templars, hospitallers, cistercians, and præmonstratenses, whose lands were privileged by the pope, with a discharge of tithes: though, upon the dissolution of the abbeys by king *Hen.* 8. most of these exemptions from tithes would have fallen with them, and the lands become tithable again, had they not been supported and upheld by the statute 31 *H.* 8. c. 13. which enacts, that all persons who should come to the possession of the lands of any abbey then dissolved, should hold them free and discharged of tithes, in as large and ample manner as the abbies themselves formerly held them. And from this original have sprung all the lands, which, being in lay hands, do at present claim to be tithe-free; for, if a man can shew his lands to have been such abbey lands, and also immemorially discharged of tithes by any of the means aforesaid, this is now a good prescription *de non decimando*. But he must shew both these requisites; for abbey lands, without a special ground of discharge, are not discharged of course; neither will any prescription *de non decimando* avail in total discharge of tithes, unless it relates to such abbey lands. 2 *Black.* 31.

**NON EST FACTUM**, is a plea where an action is brought upon a bond or any other deed, and the defendant denies it to be *his deed* whereon he is impleaded. In every case where the bond is void, the defendant may plead *non est factum*; but where a bond is voidable only, he must shew the special matter. 2 *Lill.* 226.

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This plea is good in all cases where the bond or specialty was not executed; or if it were executed, but was void *ab initio*, as for default of capacity, the obligor being an infant, feme covert, or the like, in which case the defendant may plead a special *non est factum*.

NON EST INVENTUS, is the sheriff's return to a writ when the defendant is *not to be found* in his bailiwick.

NON-FEASANCE, (*not doing* of a thing,) is an offence of omission of what ought to be done, as in not resorting to church; which offence need not be alleged in any certain place, for, generally speaking, it is not committed any where. 1 *Harw.* 13.

NON-JURORS, are persons who refuse to take the oaths to the government, who thereupon are liable to certain incapacities.

NON OBSTANTE, was a clause frequent in the king's letters patent granting a thing, *notwithstanding* any statute or act of parliament to the contrary; which assumed power, setting the prerogative above the laws, was effectually demolished by the bill of rights at the revolution, and abdicated *Westminster-hall*, when king *James* abdicated the kingdom. 1 *Black.* 342.

NON OMITTAS, is a writ directed to the sheriff, where the bailiff of a liberty or franchise, who hath the return of writs, refuses or neglects to serve a process, for the sheriff to enter into the franchise and execute the king's process himself, or by his officer, *non omittas propter aliquam libertatem*. But, for dispatch of business, a *non omittas* is commonly directed in the first instance. *F. N. B.*

NONPLEVIN, (*non plevina*,) is defined to be *default after default*. Anciently the defendant was to replevy his lands seised by the king within fifteen days; and if he neglected, then at the next court day he should lose his seisin, *sicut per defaultam post defaultam*. But by statute 9 *Ed.* 3. c. 2. it was enacted, that none should lose his land because of *nonplevin*; that is, where the land was not replevied in due time.

NON



**NON PONENDIS IN ASSISIS ET JURATIS**, is a writ granted for freeing some persons from serving on juries; but by 4 & 5 W. c. 24. no such writ shall be granted, unless upon oath made that the suggestions upon which it is granted are true.

**NON PROS'**. If the plaintiff neglects to deliver a declaration for two terms after the defendant appears, or is guilty of other delays or defaults against the rules of law in any subsequent stage of the action, he is adjudged *not to follow* or pursue his remedy as he ought to do; and thereupon a *non suit*, or *non prosequitur*, is entered; and, by a compendious form of expression, he is said to be *non pros'd*. And for thus deserting his complaint, he shall not only pay costs to the defendant, but is liable to be amerced to the king. 3 Black. 295.

**NON-RESIDENCE**. See RESIDENCE.

**NON SANE MEMORY**. See NON COMPOS.

**NONSENSE**. Where a matter set forth is grammatically right, but absurd in the sense and unintelligible, some words cannot be rejected to make sense of the rest, but must be taken as they are; for there is nothing so absurd, but what by rejecting may be made sense; but where a matter is nonsense, by being contradictory and repugnant to somewhat precedent, there the precedent matter which is sense, shall not be defeated by the repugnancy which follows; but that which is contradictory shall be rejected. As in ejectment, where the declaration is of a demise the second of *January*, and that the defendant afterwards, *scilicet*, the first of *January* ejected him, here the *scilicet* may be rejected, as being contrary to what went before. 1 Salk. 324.

**NON SUIT**, is the letting a suit or action fall; as if the plaintiff neglects to deliver a declaration for two terms after the defendant appears, or is guilty of other delays or defaults against the rules of law in any subsequent stage of the action, he is then adjudged *not to follow* or pursue his remedy as he ought to do; and thereupon a *non suit*, or *non prosequitur*, is entered: and for thus deserting his complaint, after making a false claim or complaint, he shall not only pay costs  
to

to the defendant, but is liable to be amerced to the king.  
 3 *Black.* 296.

And this deserting or renunciation of the suit often happeneth upon the discovery of some error or defect, when the matter is so far proceeded in, as the jury is ready at the bar to deliver their verdict; in which case he is then called, and may be nonsuited, notwithstanding his appearance before.  
*Br. Nonsuit.*

A *retraxit* differs from a nonsuit, in that the one is negative, and the other positive: the nonsuit is a default and neglect of the plaintiff, and therefore he is allowed to begin the suit again, upon payment of costs; but a *retraxit* is an open and voluntary renunciation of his suit in court; and by this he for ever loseth his action. 3 *Black.* 296.

A *discontinuance* is somewhat similar to a nonsuit; for when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day, and from time to time, as he ought to do, the suit is discontinued, and the defendant is no longer bound to attend; but the plaintiff must begin again, by suing out a new original, usually paying costs to the defendant. *Id.*

The king cannot be nonsuit, because in judgment of law he is ever present in court; but the king's attorney may enter an *ulterius non vult prosequi*, which has the effect of a nonsuit. 1 *Inst.* 139.

NON SUM INFORMATUS, is a formal answer made of course by an attorney, who is *not informed* or instructed to say any thing material in defence of his client; by which he is deemed to leave it undefended, and so judgment passeth against his client.

NON-TENURE, is a plea in bar to a real action, by saying that he (the defendant) holdeth not the land mentioned in the plaintiff's declaration. And there is non-tenure *general* and *special*: *general*, where one denies ever to have been tenant of the land in question; and *special*, which is an exception, alleging that he was not tenant on the day whereon the writ was obtained. *West. Symb. par. 2.*

NON-USER, of a public office, is an immediate cause of forfeiture; so also of a franchise: but non-user of a private office is no cause of forfeiture, unless some special damage is proved to be occasioned thereby. 2 *Black.* 153.

NOSE.

**NOSE-SLITTING.** By statute 22 & 23 C. 2. c. 1. if any person shall of malice aforethought, and, by lying in wait, slit the nose, or cut off a nose or lip, of any person, with intent to disfigure him, he shall be guilty of felony without benefit of clergy. Which statute goes by the name of the *Coventry act*, because it was made on occasion of an assault on sir *John Coventry* in the street, and slitting his nose, in revenge (as was supposed) for some obnoxious words uttered by him in parliament. 4 *Black.* 207.

**NOTARY**, is an officer who takes *notes*, or makes a short draught of contracts, obligations, or other writings and instruments. A *notary public*, is properly one who publicly attests deeds or writings, to make them authentic in another country, especially in business relating to merchants. They make protests in cases of bills of exchange.

**NOTE OF A FINE**, is a brief of a fine made by the proper officer, before it is ingrossed.

**NOTE OF HAND**, or a promissory note, is an engagement in writing, to pay a sum specified at the time therein limited, to a person therein named, or sometimes to his order, or often to the bearer at large; and by the statute 3 & 4 Ann. c. 9. is made assignable in like manner as a bill of exchange. 2 *Black.* 467. See **BILL OF EXCHANGE**.

**NOT GUILTY**, is the general issue or plea of the defendant in any criminal action; as also in an action of trespass, or for deceits and wrongs; but not on a promise or *assumpsit*. *Palm.* 393.

#### NOTICE :

1. THE party that intends to move the court in a questionable matter, ought to give notice thereof to the party against whom he intends to move, or to his attorney or solicitor, and not to his counsel; for the counsel is not concerned to take notice of any thing but from his client, nor bound to seek out his client to give him notice. 2 *L. P. R.* 242.

2. If one be bound to give to another *personal* notice, it is not sufficient that notice be left at the dwelling house of the party; for notice may be given there, and yet the party may not know it. 2 *L. P. R.* 237.

3. If

3. If the plaintiff intends to bring on his cause for trial at the assizes, he shall give the defendant, if he lives within forty miles of *London*, eight days notice of trial; and if he lives at a greater distance, he shall give fourteen days notice.

3 *Black.* 357.

And by the 14 *G. 2. c. 17.* no indictment, information, or cause whatsoever, shall be tried at nisi prius, where the defendant lives above forty miles from *London*, unless ten days notice be given.

And if any person shall have given notice, and shall not countermand it at least six days before the trial, he shall pay costs as if such notice had not been countermanded.

4. A recital of a deed which refers to an incumbrance upon an estate, is notice against a purchaser; so if the title must be by a will; for it was his own negligence that he did not seek after it. 2 *Cha. Ca.* 246.

A purchaser with notice himself, from a person who purchased without notice, may shelter himself under the first purchaser; otherwise it would very much clog the sale of estates. 2 *Att.* 242.

If, on a marriage settlement, an agent is employed on both sides, both will be affected by notice to him. 1 *Vez.* 65.

Notice to an agent placing out money on a mortgage, of a prior judgment, shall affect the employer. 2 *Vez.* 370.

A second mortgagee, with notice of a former mortgage, but without notice of a trust charge antecedent to both, of which the first mortgagee had notice, must take subject to that demand. 2 *Vez.* 485.

On notice to execute a writ of inquiry at a certain hour, the party is not tied down to the exact time fixed by the notice: the sheriff may have prior business which may last beyond the hour. *Douglas*, 188.

**NOVEL ASSIGNMENT**, (*nova assignatio*;) is an assignment of time, place, or such like, in an action of trespass, otherwise than as it was before assigned. And if the defendant justifies in a place where no trespass was done, then the plaintiff is to assign the place where, to which the defendant is to plead. *T. L.*

**NOVEL DISSEISIN.** A writ of assize of *novel* (new or recent) *disseisin* lies, where tenant in fee simple, fee tail, or for term of life, is put out and *disseised* of his lands or tenements, rents, common of pasture, common way, or of an office, toll, or the like: in which case, if upon trial



he can prove his title, and his actual seisin in consequence thereof, and the disseisin by the present tenant, he shall have judgment to recover his seisin and damages for the injury sustained. *Blackst. b. 3. c. 10.*

But this kind of action is now out of use, and is superseded by actions of trespass or ejectment.

**NUDUM PACTUM**, is a bare naked contract, without any consideration had for the same. If a man bargains or sells goods, and there is no recompence made or given for the doing thereof; as if one say to another, "I-sell you all my lands or goods," but nothing is agreed upon what the other shall give or pay for them, this is a nude contract, and void in law; and for the performance thereof no action will lie. *T. L.*

But if such contract be evidenced by writing, it is allowed to be good, against the contractor himself, but not to prejudice creditors or strangers to the contract. *Burr. Mansf. 1671.*

**NUN**, a woman admitted into a monastery, called by the Latins *nonna*; they used also the word *nonnus*, to signify a monk; and both from the Hebrew *nin* or *nun*, which signifies a son.

**NUNCUPATIVE WILL**, or testament is, when the testator, without any writing, declares his will, before a sufficient number of witnesses; who by the 4 & 5 *Ann, c. 16.* must be such as are admissible upon trials at common law.

But by the statute 29 *C. 2. c. 3.* no nuncupative will shall be good, where the estate bequeathed exceeds 30*l.* unless proved by three such witnesses present at the making thereof, and unless they or some of them were specially required to bear witness thereto by the testator himself; and unless it was made in his last sickness, in his own house, or where he had been previously resident ten days at least, except he be surprised with sickness on a journey or from home, and dies without returning.

And no *written* will shall be revoked or altered by a subsequent nuncupative one, except the same be in the life-time of the testator reduced to writing, and read over to him, and approved; and unless the same be proved to have been so done by three such witnesses.

And no nuncupative will shall be proved till fourteen days after the death of the testator, nor till process hath first

issued to call in the widow, or next of kin, to contest it if they think proper.

**NUSANCE**, *nocumentum*, signifies any thing that worketh annoyance, hurt, damage, or inconvenience. 3 *Black.* 216.

Nuſances are of two kinds; *public* or *common* nuſances, which affect the public, and are an annoyance to all the king's subjects; and *private* nuſances, which affect particular persons only in their private and separate capacity.

If a man erects an house, or other building, so near to mine, that it stops up my ancient lights and windows, this is a nuſance; but then it must appear that the house is an ancient house, and the lights ancient lights; otherwise there is no injury done: for he hath as much right to build a new edifice upon his own ground, as I have upon mine; since every man may do what he pleases upon the upright or perpendicular of his own soil. *Id.*

The setting up and exercising of an offensive trade, or keeping hogs, or other noisome animals, so near a man's house as to incommode him, and render the air unwholesome, is a nuſance; but stopping a prospect only, which is merely matter of pleasure, hath been held not to be in the eye of the law a nuſance. *Id.* 217.

If a man erects a smelting-house for lead, so near the land of another, that the vapour and smoke kill his corn and grass, and damage his cattle therein, this is held to be a nuſance. *Id.*

So to corrupt or poison a water-course, by erecting a dye-house or a lime-pit in the upper part of the stream, or to do any act therein, that in its consequences must necessarily tend to the prejudice of one's neighbour. *Id.* 218.

A gate erected in a highway, where none had been before, is a common nuſance. 1 *Haw.* 199.

If a man has a dog that kills sheep, this is not a common nuſance; but the owner of the dog (knowing thereof) is liable to an action: but a mastiff going at large in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to the king's subjects, seemeth to be a common nuſance.

Generally, a nuſance may be abated or removed by the party aggrieved thereby, without the formalities of legal process, provided he commit no riot in the doing of it. If a man builds a house so close to mine that his roof overhangs my roof, and throws the water off his roof upon mine,

which is a *private* nuisance, I may enter my neighbour's ground, and peaceably pull it down. Or if a new gate be erected across a public highway, which is a *public* or common nuisance, any of the king's subjects passing that way may cut it down and destroy it. And the reason why the law allows this private summary method of doing one's self justice is, because injuries of this kind, which obstruct or annoy such things as are of daily convenience and use, require an immediate remedy; and cannot wait for the slow progress of the ordinary forms of justice. 3 *Black.* 5.

If a man hath not availed himself of this remedy by abatement, he may, if it is a *private* nuisance, bring his action against the wrong doer. The ancient remedy in this case, was by the writs of *assise of nuisance*, and *quod permittat prosteruere*, whereby judgment was given for damages to the plaintiff, and to remove the nuisance; but the process on these writs being tedious and difficult, they are now entirely out of use, and have given way to an action upon the case: by which action, indeed, though the party injured may recover satisfaction for the injury sustained, yet the nuisance cannot be removed; but as every continuance of a nuisance is a fresh nuisance, therefore a fresh action will lie, and very exemplary damages will probably be given, if, after one verdict against him, the defendant has the hardness to continue it. *Id.* 220.

For a *public* nuisance, no action upon the case will lie; and this the law hath provided for avoiding multiplicity of suits; for if any one might have an action, all men might have the like; but the law, for this public or common nuisance, hath provided an apt remedy, by presentment or indictment at the suit of the king, in behalf of all his subjects; unless any man hath a particular damage, as if he and his horse fall into a ditch made across a highway, whereby he received hurt and loss, there, for his special damage, which is not common to others, he shall have an action upon the case. 1 *Inst.* 56.

On conviction of a nuisance, the offender may be fined and imprisoned; and it is said, that a person convicted of a nuisance done to the king's highway, may be commanded by the judgment to remove the nuisance at his own costs; and it seemeth to be reasonable, that those who are convicted of any other common nuisance, shall also have the like judgment. And the court never admits the defendant to a small fine, until proof is made of the nuisance being removed. 1 *Haw.* 200. *Dalt. c.* 66.

## O A T

**O**ATH is a corruption of the Saxon word *eoth*. It is commonly called a corporal oath, because the person lays his hand upon some part of the scriptures when he takes it.

If the oath be taken upon the common prayer-book, which has the epistles and gospels, it is good enough, and perjury may be assigned on this oath. 3 *Keb.* 314.

If one call another a *perjured* man, he may have an action on the case, because it shall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forsworn* man, no action lies; because the forswearing may be extrajudicial, and consequently no perjury in law. 3 *Inst.* 166.

The oath of *allegiance* is very ancient, and every layman above the age of twelve years was obliged to take it at the tourn or leet, on pain of being punished as for a high contempt. But the clergy were not obliged to take it until the reformation, any further than doing homage to the king for the lands holden of him in right of the church, 1 *Inst.* 68.

The oath of *supremacy* came in upon abolishing the papal authority at the reformation.

The oath of *abjuration* came in after the revolution; received some alterations in the first year of queen *Anne*; and again in the first year of king *George* the first; and, finally, in the sixth year of king *George* the third.

By statute 1 *G. 2. c.* 13. two justices of the peace may summon persons, whom they shall suspect to be disaffected, to appear before them at a time and place appointed, to take the oaths; which, if they shall refuse or neglect to do, they shall certify the same to the next sessions; and if the party shall not appear at such sessions, and take the oaths, he shall be adjudged a popish recusant convict; and the clerk of the peace shall certify the same into the chancery, or court of king's bench, to be there recorded.

Quakers are allowed, in civil cases, to take a solemn affirmation instead of an oath; but not in criminal cases: nor shall they, without such oath, be permitted to serve on juries, or to bear any office of profit in the government.

Jews and heathens are allowed to take an oath after their own form and manner. *Str.* 404.



**OBIT**, signifies a funeral solemnity or office for the dead ; most commonly performed when the corpse lies in the church uninterred. Also the anniversary of any person's death was called the obit ; and to observe such day with prayers and alms, or other commemoration, was keeping of the obit.

**OBLATIONS.** See **OFFERINGS.**

**OBLIGATION**, *obligatio*, is a bond containing a penalty with a condition annexed for the payment of money, performance of covenants, or the like ; it differs from a bill, which is generally without a penalty or condition, though a bill may be obligatory. *Co. Lit.* 172.

**OBLIGOR**, is the party that enters into an obligation or bond ; **OBLIGEE** is the person to whom the bond is made.

**OCCASIO**, was a tribute which the lord imposed on his vassals and tenants, occasionally, for the wars or other necessities.

**OCCUPANCY**, is the taking possession of those things, which before belonged to no body ; and this is the true ground and foundation of all property, or of holding those things in fealty, which by the law of nature, unqualified by that of society, were common to all mankind. But this right of occupancy, so far as it concerns real property, hath been confined by the laws of *England* within a very narrow compass, and was extended only to a single instance ; namely, where a man was tenant *pur auter vie*, or had an estate granted to himself only (without mentioning his heirs) for the life of another person, and died during the life of *cestuy que vie*, or him by whose life it was holden ; in this case, he that could first enter on the land might lawfully retain the possession so long as *cestuy que vie* lived, by right of occupancy : for it did not revert to the grantor, who had parted with all his interest, so long as *cestuy que vie* lived ; it did not escheat to the lord of the fee, for all escheats must be of the absolute entire fee, and not of any particular estate carved out of it ; it did not belong to the grantee, for he was dead ; it did not descend to his heirs, for there were no words of inheritance in the grant ; nor could it vest in his executors, for no executors could succeed

ceed to a freehold. Belonging therefore to no body, the law left it open to be seized and appropriated by the first person that could enter upon it, during the life of *cestuy que vie*, under the name of an occupant. But now the title of common occupancy is reduced almost to nothing, by two statutes; the one, 29 C. 2. c. 3. which enacts, that where there is no special occupant in whom the trust may vest, the tenant *pur auter vie* may devise it by will, or it shall go to executors or administrators, and be assets in their hands for payment of debts; the other, 14 G. 2. c. 20. which enacts, that the surplus of such estate *pur auter vie*, after payment of debts, shall go, in a course of distribution, like a chattel interest. 2 Black. 258.

Generally, as to things *personal*, where these are found without any owner, they do not go to the first finder or occupant, but do belong to the king by his prerogative.

OCCUPATION signifies, in our law, use or tenure; as we say, such lands are in the tenure or occupation of such a man; that is, in his possession or management. Also it is used for a trade or mytery. 12 C. 2. c. 18.

ODHALL, or *allodial* right, signifies the absolute property in lands; from *all*, and *odh*, which in the Northern languages signifies property. These lands were holden of no superior lord, being absolutely independent, which, after the introduction of feuds, was converted into the military tenure. 2 Black. 45.

ODIO ET ATIA, was a writ anciently used, and directed to the sheriff, commanding him to inquire whether a prisoner charged with murder was committed upon just cause of suspicion, or merely *propter odium et atiam*, for hatred and ill-will: and if, upon the inquisition, due cause of suspicion did not appear, then there issued another writ for the sheriff to admit him to bail. 3 Black. 128.

OFFENCE, is an act committed against law, or omitted where the law requires it. Offences are of two sorts, *capital*, or *not capital*; capital offences are those for which the offender shall lose his life; such as *high treason*, *petit treason*, and *felony*; offences not capital, include the remaining part of the pleas of the crown, and come under the title of *misdemeanors*. 2 H. P. c. 126. 134. Finch, 25.

**OFFERINGS**, *oblations*, and *obventions*, are one and the same thing; and under these are comprehended all small ecclesiastical dues, payable at *Easter* by communicants; as also for marriages, christenings, churchings, and burials.

**OFFERTORY**, *offertorium*, is a service in the church, which is read at the celebration of the holy communion, during the time that the church wardens are collecting the alms or *offerings* of the congregation for the use of the poor. Sometimes the money collected is itself called the *offertory*.

**OFFICE**. By divers statutes, every person admitted into any office, civil or military, or who shall receive any pay by reason of any patent or grant from the king, or shall have any command or place of trust in *England*, or in the navy, or shall have any service or employment in the king's household, shall, within three months after his admission, receive the sacrament; and afterwards, in the court where he takes the oaths to the government, shall exhibit a certificate of such his receiving under the hands of the minister and church wardens, and make and subscribe the declaration against transubstantiation.

Which said oaths are the oaths of allegiance, supremacy, and abjuration, which are to be taken within six months after their admission in one of the courts at *Westminster*, or at the quarter sessions, by all the said persons; as also by all ecclesiastical persons, heads and members of colleges, being of the foundation, or having any exhibition, and being of eighteen years of age, and all persons teaching pupils, schoolmasters and ushers, preachers and teachers of separate congregations, high constables, and practisers of the law.

And if any person shall make default in the premises, he shall be incapable to hold such office, or to sue in any action, or to be guardian, executor, or administrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and forfeit 500l.

By 31 G. 2. c. 22. a duty of 1s. in the pound is laid on all perquisites of offices; by which perquisites are meant, such profits as arise from fees established by custom or authority, and payable in consideration of business done in the course of such offices.

When a person is refused to be admitted to an office or place in a corporation, or is wrongfully removed therefrom, the statute 9 An. c. 20. hath provided a summary remedy by  
a writ

a writ of mandamus; commanding, upon good cause shewn to the court, the party complaining to be admitted, or restored, to his office. 3 *Black.* 264.

OFFICE, *inquest of*, is an inquiry made by the king's officer, his sheriff, coroner, or escheator, by virtue of their office, or by writ to them sent for that purpose, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels. These inquests of office were more frequently in practice than at present, during the continuance of the military tenures; when, upon the death of every one of the king's tenants, an inquest of office was held, called an *inquisition post mortem*; to inquire of what lands he died seised, who was his heir, and of what age; in order to entitle the king to his marriage, wardship, relief, primer seisin, or other advantages. 3 *Black.* 258.

OFFICIAL, by the *civil* law, is one that is the minister of, or attendant upon, a magistrate. In the *canon* law, he is one to whom the bishop commits the charge of spiritual jurisdiction, under the name of *official principal*, who hath cognizance of temporal matters, such as wills, legacies, and administrations; as the *vicar general* hath of ecclesiastical matters, as visitation, correction of manners, and the like. Both of which offices are commonly united under the general name of *chancellor*.

OFFICIO, EX, oath of, is an oath whereby a person may be obliged to make any presentment of any crime or offence, or to confess or accuse himself of any criminal matter or thing, whereby he may be liable to any censure, penalty, or punishment. This oath was made use of in the spiritual courts, as well in criminal cases of ecclesiastical cognizance, as in matters of civil right; of which the high commission court in particular made a most extravagant and illegal use, forming a court of inquisition, in which all persons were obliged to answer in cases of bare suspicion, if the commissioners thought proper to proceed against them for any supposed ecclesiastical enormities. But when the high commission court was abolished by statute 16 C. 1. c. 11, this oath *ex officio* was abolished with it; and it is also enacted by statute 13 C. 2. *st.* 1. c. 12. that it shall not be lawful for any bishop, or ecclesiastical judge, to tender to any person the oath *ex officio*, or any other oath whereby the party may be charged



charged or compelled to confess, accuse, or purge himself of any *criminal* matter. But this doth not extend to oaths in a *civil* suit; and therefore it is still the practice, both in the spiritual courts and in equity, to demand the personal answer of the party himself upon oath. Yet if in the bill any question be put, that tends to the discovery of any crime, the defendant may thereupon demur, and refuse to answer. 3 *Black.* 447.

**OLERON LAWS**, are a code of maritime laws, made by king *Richard* the first, at the isle of *Oleron*, on the coast of *France*, which was then part of the possessions of the crown of *England*. These laws are of so much repute, that they have been received by all the nations in *Europe*, as the ground work of their marine constitutions.

**ONUS PROBENDI**, is the burden of proving any thing.

**OPTION**. Every bishop, whether created or translated, is bound, immediately after confirmation, to make a legal conveyance to the archbishop, of the next avoidance of such dignity or benefice belonging to the see, as the said archbishop shall chuse; which is therefore called an *option*; which options are only binding on the bishop himself who grants them, and not on his successors.

**ORDEAL**, is said to be derived of two Saxon words, *or*, great, and *dele*, judgment; that is, the *great judgment*; which was a form of trial for discovering innocence or guilt. Anciently, when an offender being arraigned, pleaded not guilty, he was asked (as he is still to this day) how he would be tried. Which was then a significant question, although now it is only matter of form; for he had it in his choice, whether he would be tried by *battel*, or by *ordeal*, (which was called the judgment of God,) or by his *country* (that is, by a jury of twelve men). The trial by *ordeal*, which was peculiarly denominated the *judgment of God*, was called *common purgation*, to distinguish it from the *canonical purgation*, which was by the oath of the party: and it was of two sorts; either *fire* ordeal, or *water* ordeal; the former being confined to persons of higher rank, the latter to the common people. Both these might be performed by deputy, but the principal was to answer for the success of the trial; the deputy only venturing some corporal pain, for hire, or perhaps  
for

for friendship. Some remains of which there are still in the common expression of going through fire and water to serve another. *Fire* ordeal, was performed either by taking up in the hand a piece of red-hot iron, of one, two, or three pounds weight; or else by walking, barefoot and blindfold, over nine red hot plowshares, laid at unequal distances; and if the party escaped being hurt, he was adjudged innocent; but if it happened otherwise, he was then condemned as guilty. By this latter method, queen *Emma*, mother of *Edward* the Confessor, is mentioned to have cleared her character, when suspected of familiarity with *Alwyn*, bishop of *Winchester*. *Water* ordeal was performed, either by plunging the bare arm up to the elbow in boiling water, and escaping unhurt thereby, or by casting the person suspected into a river or pond of cold water; and if he floated therein, without any action of swimming, it was deemed an evidence of his guilt; but if he sunk, he was acquitted: of which kind of water ordeal, there are still some traditional remains in many countries to discover witches, by casting them into a pool of water, whereby to determine their guilt or innocence, by floating or sinking. 4 *Black.* 340.

**ORDINARY**, in the ecclesiastical law, is a word applied to a bishop, or any other who hath ordinary jurisdiction in his own right, and not by deputation. But sometimes it is taken less strictly, for every one that is in the place of the bishop; as guardian of the spiritualties, chancellors, commissaries, and all such as are in the place of the ordinary. 1 *Inst.* 96. 2 *Inst.* 398.

**ORDINATION**: No person shall be admitted to the holy order of deacon, unless he be twenty-three years of age; nor to the order of priest, unless he be twenty-four years of age complete. And none shall be ordained without a title. And he shall have a testimonial of his good life and behaviour. And the bishop shall examine him; and, if he sees cause, may refuse him. And before he is ordained, he shall take the oaths of allegiance and supremacy before the ordinary, and subscribe the thirty-nine articles.

**ORIGINAL WRIT**, is a mandatory letter from the king in parchment, sealed with his great seal, and directed to the sheriff of the county wherein the injury is committed, or supposed so to be, requiring him to command the wrong doer,  
or

or party accused, either to do justice to the complainant, or else to appear in court, and answer the accusation against him. Whatever the sheriff doth in pursuance of this writ, he must return or certify to the court, together with the writ itself; which return is always made to be at the least fifteen days from the date or teste of the writ. 3 *Black.* 273. This original is the foundation of the *capias*, and all subsequent process. The court of common pleas proceeds by original in all cases.

*Original writs* in actions are also used in the king's bench; and when the party proceeds on such writ, error lies in parliament only, and not (as on the common process) in the exchequer chamber.

To sue a party to outlawry, the proceedings must be by *original*.

**ORPHAN.** In the city of *London*, a court is established for the care and government of orphans, which is a court of record. The lord mayor and aldermen have the custody of orphans (under age and unmarried) of freemen or free-women of *London* that die, though they did not inhabit in *London*; and the keeping of all their lands and goods. And if they commit the custody of an orphan to another man, he shall have a writ of ravishment of ward, if the orphan is taken away; or the mayor and aldermen may imprison the offender till he produces the infant. *Wood. b. 4. c. 2.*

Executors and administrators are to exhibit true inventories in this court, and must give security to the chamberlain, by recognizance for the orphan's part; which, if they refuse to do, the court may commit them to prison till they obey. And if any sue in the ecclesiastical court, or elsewhere, for a legacy, account, or duty to them by the custom, the court of orphans may by custom send a prohibition. But an infant may waive the benefit of suing in the court of orphans, and file a bill in equity against any one for discovery of the personal estate. *Id.*

If any one, without the consent of the court of aldermen, marries such orphan under the age of twenty-one, though out of the city, they may fine him, and imprison him for non-payment. *Id.*

**OVERT**, Fr. open. So *overture*, an opening, or proposal.

OVERT

**OVERT ACT**, open deed. In the case of treason in compassing or imagining the death of the king, this imagining must be manifested by some open act; otherwise being only an act of the mind, it cannot fall under any judicial cognizance. Bare words are held not to amount to an overt act, unless put into writing; in which case they are then held to be an overt act, as arguing a more deliberate intention.

**OUSTED**, is from the French *ouster*, to put out; as when we say such a one is ousted; that is, put out of possession.

**OUSTER LE MAIN**, *amovere manum*, signifies a livery of lands out of the hands of the lord, after the tenant came of age; which, if the lord refused to do, the tenant might have a writ to recover the same from the lord; which recovery *out of the hands* of the lord, was called *ouster le main*.

**OUSTER LE MER**, *ultra mare*, is one of the causes of essoign or excuse, if a man appear not in court upon summons, for that he was then beyond the seas.

**OUTFANGTHIEF**, from the Saxon *ut*, out, and *fang*, taken, is a liberty or privilege, whereby a lord of a manor was enabled to call any man dwelling in his manor, and taken for felony in another place *out of* his manor, to judgment in his own fee; as *infangthief* was the privilege of trying a thief or felon taken *within* his fee.

**OUTLAW**, (outlaghe,) *utlagatus*, comes not immediately from the latin *lex*, but is derived to us through the Saxon *laga*, which signifies *law*: and a person outlawed, is one that is out of the protection of the king, and out of the aid of the law.

Process of outlawry lies in all indictments of treason and felony, on returns of rescous, on indictments of trespass with force and arms; but not any indictment for a crime of an inferior nature. And it seems agreed, that it lies not on any action on a statute, unless it be given by such statute, either expressly or impliedly. But, by divers statutes, outlawry lies in many civil actions; as in debt, case, account, covenant, and the like. 2 *Haw.* 302.

In



In which cases, in order to proceed to outlawry, an *original writ* must be sued out regularly, and after that a *capias*; and if the sheriff cannot find the defendant upon the *capias*, and returns a *non inventus*, there issues out an *alias writ*, and after that a *pluries*, to the same effect as the former. And if a *non inventus* is returned upon all of them, then a writ of *exigent* may be sued out, requiring the sheriff to cause the defendant to be proclaimed or *exacted* in five county courts successively, to render himself; and, if he does, then to take him, as in a *capias*; but if he doth not appear, and is returned *quinto exactus*, he shall then be outlawed by the coroners of the county; whereby he is put out of the protection of the law, so as to be incapable of taking the benefit of it in any respect, either by bringing actions or otherwise.

3 *Black.* 283.

By the 31 *El. c. 3.* in every action *personal*, wherein any *exigent* shall be awarded, one writ of proclamation shall be issued, having day of teste and return, as the writ of *exigent* shall have, directed to the sheriff where the defendant dwells; which writ of proclamation shall contain the effect of the action; and the sheriff shall make one proclamation in the open county court, and another at the general quarter sessions of the peace where the defendant dwells, and another a month at least before the *quinto exactus*, at or near the most usual door of the church or chapel where the defendant shall be dwelling, at the time of the *exigent* awarded, on a *Sunday* immediately after divine service.

And by 4 & 5 *W. c. 22.* upon issuing an *exigent* against any person for a *criminal* matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same teste and return, where the person in the record of the proceeding is mentioned to inhabit, according to the form of the said statute 31 *El. c. 3.* which writ of proclamation shall be delivered to the sheriff, three months before the return of the same.

The punishment of an outlawry in a *civil* action, and also upon an indictment for a misdemeanor, is forfeiture of goods and chattels. And if after outlawry, the defendant appears publicly, he may be arrested by a writ of *capias utlagatum*, and confined till the outlawry be reversed; which reversal may be had by the defendant's appearing personally in court (and in the king's bench without personal appearance, so as he appear by attorney according to the statute 4 & 5 *W. c. 18.*); and any plausible cause, however slight,  
will

will in general be sufficient to reverse it, the same being considered only as a process to compel an appearance. But then the defendant must pay full costs, and put the plaintiff in the same condition, as if he had appeared before the *exigent* was awarded. An outlawry in *treason* or *felony* amounts to a conviction and attainder of the offence charged in the indictment, as much as if the offender had been found guilty by his country. 3 *Black.* 284. 4 *Black.* 319.

**OWLING**, (so called from its being carried on in the night, when the owl is abroad,) is the offence of transporting wool or sheep out of the kingdom; which was an offence at common law, and is further prohibited by divers acts of parliament. The 8 *El. c. 3.* makes the transporting of live sheep, or embarking them on board any ship, for the first offence, forfeiture of goods and imprisonment for a year; and, at the end of the year, the left hand to be cut off in some public market, and nailed in the openest place; and the second offence is felony. (But the offender may have his clergy, as well in the case of cutting off his hand, as in the case of felony. 3 *Inst.* 104.) The statute 12 *G. 2. c. 32.* and 7 & 8 *W. c. 28.* make the exportation of wool, sheep, or fuller's earth, liable to pecuniary penalties; and the forfeiture of the interest of the ship and cargo by the owners, if privy thereto; and confiscation of goods, and three years imprisonment to the master and all the mariners. And the statute 4 *G. c. 11.* (amended and further enforced by 12 *G. 2. c. 21.* and 19 *G. 2. c. 34.*) makes it transportation for seven years, if the penalties be not paid. 4 *Black.* 154. [All these acts are repealed by 28 *G. 3. c. 38.* See *WOOL.*]

**OXGANG** of land, is of no certain determinate quantity, being in general as much as in an ordinary way one yoke of oxen can cultivate in a year.

**OYER AND TERMINER**, is a court held by virtue of the king's commission, to *hear and determine* all treasons, felonies, and misdemeanors. This commission is directed commonly to two of the judges of the circuit, and several gentlemen of the county; but the judges only are of the quorum, so that the rest cannot act without them. The words of the commission are, "to inquire, hear, and determine;" so that, by virtue of this commission, they can only proceed upon an indictment found at the same assizes; for they

they must first *inquire* by means of the grand jury, or inquest, before they are impowered to *hear and determine* by the help of the petty jury. Therefore, they have another commission, of *general gaol delivery*; which impowers them to try and deliver every prisoner, who shall be in gaol when the judges arrive at the place of assize, whenever indicted, or for whatever crime committed. So that, one way or other, the gaol is cleared at that time. Sometimes, upon urgent occasions, the king issues a special or extraordinary commission of oyer and terminer, limited to those offences which stand in need of immediate inquiry and punishment; upon which, the course of proceeding is much the same as upon general and ordinary commissions. Formerly, no judge could act in the county where he was born or inhabited; but now, by the 12 G. 2. c. 27. he may act as a justice of oyer and terminer, and of general gaol delivery, within any county of *England*; though he is still restrained in civil causes of assize and nisi prius. 4 *Black.* 269.

OYES, is an expression used by the crier of a court, in order to enjoin silence, when any proclamation is to be made; being a corruption of the French *oyez*, which signifies *hear ye*. 4 *Black.* 340.

## P A I

PAIN FORTE ET DURE. See MUTE.

PAINS AND PENALTIES. Acts of parliament to attain particular persons of treason or felony, or to inflict *pains and penalties* beyond, or contrary to the common law, to serve a special purpose, are to all intents and purposes new laws, made *pro re nata*, and by no means an execution of such as are already in being. 4 *Black.* 259.

PAIS, *patria*, the country; as trial *per pais*, is trial by the country, or a jury.

PALATINE COUNTIES, are those of *Chester*, *Durham*, and *Lancaster*; so called a *palatio*, because the owner thereof, the earl of *Chester*, the bishop of *Durham*, and the duke

of *Lancaster*, had in those counties *jura regalia*, as fully as the king hath in his *palace*. They had large privileges granted to them, because they bordered upon the enemies countries, *Wales* and *Scotland*; in order that the owners, being encouraged by so large an authority, might be more watchful in their defence; and that the inhabitants, having justice administered at home, might not be obliged to go out of the county, and leave it open to the enemies incursions. 1 *Black.* 116.

**PALMESTRY**, a kind of divination practised by looking upon the lines and marks in the *palm* of the hand; being a deceitful art used by the Egyptians, prohibited by the statute 1 & 2 P. & M. c. 4. 4 *Black.* 166.

**PANEL**, is a little *pane*, or oblong piece of parchment, containing the names of the jurors, annexed to the writ of *venire facias*, and returned by the sheriff to the court from whence the process issued.

**PANNAGE**, *pasnage*, is the fruit of trees; as acorns, crabs, nuts, which the swine feed upon in the woods. Sometimes also, it is used to signify the money which is paid for the pannage.

**PAPER**. By the 24 G. 3. c. 41. every paper-stainer or maker of paper, shall take out a licence annually from the officers of excise.

And by the 27 G. 3. c. 13. and 27 G. 3. c. 31. certain duties are imposed on all paper made, printed, painted, or stained in *Great Britain*; and also on paper imported; and drawbacks are allowed on the exportation thereof, as set forth in schedules annexed to the said acts. And several regulations are made by the said acts, and also by several others, concerning the making, printing, painting, and staining of paper, which is to be under the management of officers appointed by the commissioners of the treasury.

**PAPISTS**. See **POPERY**.

**PAR**, is a term in exchange, where a man, to whom a bill is payable, receives of the acceptor just so much in value as was paid to the drawer by the remitter. And, in the exchange between one country and another, *par* is defined



to be a certain number of pieces of the coin of one country, containing in them an *equal* quantity of silver to that of another number of pieces of the coin of some other country; as, where 36*s.* of the money of *Holland*, have just as much silver as 20*s.* *English* money; the bills of exchange drawn from *England* to *Holland* at the rate of 36*s.* *Dutch* for each pound sterling, is according to the *par*. *Lock's Consideration of Money*, pag. 18.

PARAMOUNT, signifies the highest lord of the fee, having under him inferior or mesne lords, of whom the tenants hold immediately, as they hold mediately of the lord paramount. This feigniory of a lord paramount, is frequently termed an *honour*, and not a manor; especially, if it hath belonged to an ancient feudal baron, or hath been at any time in the hands of the crown. 2 *Black.* 91.

PARAPHERNALIA, from *παρά, prater*; and *Φεγν, dos*; are the woman's apparel, jewels, and other things, which, in the life-time of her husband, she wore as the ornaments of her person, to be allowed by the discretion of the court, according to the quality of her and her husband, over and above her jointure and dower.

The husband cannot by his will devise such ornaments and jewels of his wife; though, during his life, he hath power to sell or dispose of them. But if she continues in the use of them till his death, she shall afterwards retain them against his executors and administrators, legatees, and all other persons, except creditors where there is a deficiency of assets. 2 *Black.* 430.

Where the personal estate hath been exhausted in payment of specialty creditors, the widow shall stand in their place to the amount of her *paraphernalia*, upon the real assets of the heir at law 3 *Atk.* 369.

PARAVAIL, signifies the lowest tenant of the fee, or he that is immediate tenant to one that holdeth over of another: and he is called tenant *paravail*, because it is presumed he has the profit and *avail* of the land. 2 *Inst.* 296.

PARCENARY, is the holding of lands jointly by parceners, when the common inheritance is not divided. For which, see COPARCENERS.

PARCH-

PARCHMENT. See VELLUM.

PARCO FRACTO, is a writ that lies against one who violently breaks the pound, and takes out beasts from thence which had been lawfully impounded.

PARDON, is a work of mercy, whereby the king, either before the attainder, sentence, or conviction, or after, forgives any crime, offence, punishment, execution, right, title, debt, or duty, temporal or ecclesiastical. 3 *Inst.* 233.

Pardons are either *general* or *special*: *general*, are by act of parliament; of which, if they are without exceptions, the court must take notice *ex officio*; but if there are exceptions therein, the party must aver that he is none of the persons excepted. The acts of general pardon, from time to time occasionally passed, have commonly run in one and the same form. The last was that of the 20 G. 2. c. 52. whereby all persons are pardoned and discharged from all treasons, misprisions of treasons, felonies, treasonable and seditious words and libels, leasing making, misprisions of felony, offences whereby any person may be charged with the penalty of *præmunire*, riots, routs, offences, contempts, trespasses, entries, wrongs, deceits, misdemeanors, forfeitures, penalties, sums of money, pains of death, pains corporal, and pains pecuniary, and generally, from all other things, causes, quarrels, suits, judgments, and executions, not by this act excepted, which can by the king be pardoned: —Excepted, persons in the service of the pretender; forging the king's seal; coining; violating the privileges of ambassadors; murders; petty treasons; poisonings; burning of houses, corn, hay, straw, wood; shooting at any person; sending threatening letters; piracy; destroying ships; offences in the navy or army; burglary; sacrilege; robbery; sodomy; buggery; rape; perjury; subornation; forgery; felony in cases of bankruptcy; destroying banks of rivers, and sea banks; firing coal-pits; offences against the excise, customs, land-tax, post-office, stamp duties, duty on houses and windows, wool, importing, or exporting goods; offences concerning highways or bridges; imbezzling goods and warlike stores of the crown; titles of *quare impedit*, incest; simony; dilapidations; first fruits; tenths; money due to the king from public officers on account; persons transported; offences by papists; contempts in cases for non-performance of awards, or non-payment of costs; contempts

in ecclesiastical courts, in causes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, several persons by name.

*Special pardons* are either *of course*, as to persons convicted of manslaughter, or *se defendendo*; and by divers statutes, to those who shall discover their accomplices in several felonies; or, *of grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they must be pleaded  
3 *Inst.* 233.

Some things there are which the king cannot pardon; as, he cannot pardon an offence before it is committed, but such pardon is void. 2 *Haw.* 389.

As the release of the party will not bar an indictment at the suit of the king; so neither will a pardon by the king be any bar to an appeal at the suit of the party. 2 *Haw.* 392.

And in some cases, even where the king is sole party, some things there are which he cannot pardon; as, for example, for all common nuisances, as for not repairing of bridges or highways, the suit (for avoiding multiplicity of suits) is given to the king only, for redress and reformation thereof; but the king cannot pardon or discharge either the nuisance, or the suit for the same; because, such pardon would take away the only means of compelling a redress of it.  
3 *Inst.* 237.

Thus also, if one be bound by recognizance to the king, to keep the peace against another by name, and generally, all other lieges of the king, in this case, before the peace be broken, the king cannot pardon or release the recognizance, although it be made only to him, because it is for the benefit and safety of his subjects. *Id.* 238.

A pardon after retainer doth not restore the corruption of blood, for this cannot be restored but by act of parliament. But, as to issue born after the pardon, it hath the effect of a restitution of blood. 1 *H. H.* 358.

A pardon of treason or felony restores a man to his credit so as he may be a good witness; but a pardon of perjury doth not so restore his credit as to admit him to be a witness. 1 *Ventr.* 349.

#### PARENTS AND CHILDREN:

1. If a man hath a wife and dieth, and within a very short time after, the wife marries again, and within nine months hath a child, so as it may be the child of the one or

the other, this child may chuse either of them for his father.

1 *Inst.* 8.

2. The father hath interest in the profits of the children's labour while they are under age, if they live with him, and are maintained by him. But the father hath no interest in the *estate* of the children, either real or personal, otherwise than as their guardian; for he must account to them for it, and for the profits received, when they come of age. *Wood. b. 1. c. 6.*

So the father cannot apply a legacy left to a child in the maintenance of such child; nor can he put him out apprentice with the money arising from the legacy. 3 *Atk.* 399.

3. The consent or concurrence of the parent to the marriage of a child under age is necessary; otherwise the marriage is void. 26 *G. 2. c. 33.*

4. If a child dies intestate and unmarried, the father alone is intitled to the goods and chattels of such child: if there be no father, the mother can only come in for an equal share with every of the brothers and sisters.

5. The eldest son is heir to his father; if there be no son, but daughter only, then all the daughters shall be heirs equally.

6. Parents and children may assist each other in their suits; and may justify the defence of each other's persons. 2 *Inst.* 564.

7. Father and grandfather, mother and grandmother, and children of every poor and impotent person, being of sufficient ability, shall maintain such poor person in such manner as the justices in sessions shall appoint; by the 43 *Eliz. c. 2.* And the interpretation which the courts of law have made upon this statute is, that if a mother or grandmother marries again, and was before such second marriage of sufficient ability to keep the child, the husband shall be charged to maintain it; for this being a debt of her's when single, shall, like others, extend to charge the husband. But at her death, the relation being dissolved, the husband is under no farther obligation. 1 *Black.* 448.

If parents run away, and leave their children at the charge of the parish, the churchwardens and overseers, by order of the justices, may seize the rents, goods, and chattels of such parents, and dispose thereof towards their children's maintenance. 5 *G. c. 8.*



If any popish parent shall refuse to allow his protestant child a fitting maintenance, with a view to compel him to change his religion, the lord chancellor shall, by order of court, constrain him to do what is just and reasonable.

11 & 12 W. c. 4.

Also, if Jewish parents refuse to allow their protestant children a fitting maintenance, suitable to the fortune of the parent, the lord chancellor, on complaint, shall make such order therein as he shall think proper. 1 *An. ft.* 1. c. 30.

8. A parent may lawfully correct his child, being under age, in a reasonable manner. But the legal power of a father over the persons of his children ceaseth at the age of twenty-one; for they are then arrived at that point which the law hath established, when the empire of the father, or other guardian, gives place to the empire of reason. 1 *Black.* 452, 3.

PARES, a man's *peers* or *equals*; as the jury for trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the king's vassals, or the lords themselves, judged each other in the king's court. 3 *Black.* 349.

PARISH, is that circuit of ground which is committed to the charge of one parson, or vicar, or other minister, having care of souls therein. These districts are computed to be near ten thousand in number. How ancient the division of parishes is, may at present be difficult to ascertain; for it seems to be agreed, that in the early ages of christianity in this island, parishes were unknown, or at least signified the same that a diocese does now. There was then no appropriation of ecclesiastical dues to any particular church; but every man was at liberty to contribute his tithes to whatever priest or church he pleased, provided only, that he did it to some: or, if he made no special appointment or appropriation thereof, they were paid into the hands of the bishop, whose duty it was to distribute them among the clergy, and for other pious purposes, according to his own discretion. 2 *Black.* 112.

PARISH

PARISH CLERK, was anciently a real clerk, and some are so at this day. He is generally appointed by the incumbent, but by custom may be chosen by the inhabitants; and if such custom appears, the court of king's bench will grant a mandamus to the ordinary to swear him in, for the establishment of the custom turns it into a temporal or civil right. Parish clerks are regarded by the common law, as persons who have freeholds in their offices; and therefore, though they may be punished, yet they cannot be deprived, by ecclesiastical censures. 1 *Black.* 395.

PARK, (from the French *parquer*, to inclose,) is a large parcel of ground privileged for wild beasts of chase, by the king's grant, or by prescription. 1 *Inst.* 233.

A park must be inclosed; for if it lies open, it is a good cause of seizure into the king's hands as forfeited; and the owner cannot have an action against those that hunt in his park, if it lies open. *Id.*

The beasts of park properly extend to the buck, doe, fox, martern, and roe; but, in a common and legal sense, to all the beasts of the forest; which, besides the other, are reckoned to be hart, hind, hare, boar, and wolf, and, in a word, all wild beasts of venery or hunting. *Id.*

Parks, as well as chases, are subject to the common law, and are not to be governed by the forest laws. 4 *Inst.* 314.

If any person shall pull down or destroy the pale or wall of any park, he shall forfeit 30*l.* 16 *G.* 3. c. 30.

#### PARLIAMENT :

1. *Issuing the writ.*
2. *Qualification of the candidates.*
3. *Qualification of the electors.*
4. *Election.*
5. *Return.*
6. *Manner of proceeding in parliament.*
7. *Privilege of parliament.*
8. *Adjournment, prerogation, and dissolution.*

##### 1. *Issuing the writ.*

1. WHEN any new parliament is summoned, the lord chancellor sends his warrant to the clerk of the crown in chancery,

chancery, who thereupon issues out writs to the sheriff of every county, for the election of all the members to serve for that county, and every city and borough therein. Or, if a vacancy happens during the sitting of parliament, the speaker, by order of the house, issues the like writ; and if a vacancy happens by death, in the time of a recess for upwards of twenty days, then the speaker issues such writ without the order of the house.

And there shall be forty days between the teste or date of the writ, and the return of it.

And the writ shall be delivered to the proper officer to whom the execution thereof doth belong, and to no other person. 7 & 8 W. c. 25. s. 1.

And every such officer, upon receipt of the writ, shall indorse thereon the day that he received it. *Id.*

2. And in case of an election of a *knight of a shire*, the sheriff shall, within two days after the receipt of the writ, cause proclamation to be made at the place where the ensuing election ought by law to be holden, of a special county court to be there holden, for the purpose of such election only, on any day, (*Sunday excepted*), not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day; and shall proceed in such election, at such special county court, in the same manner as if the said election was to be held at a county court as heretofore. 25 G. 3. c. 84. s. 4.

3. With respect to *cities, boroughs, and towns corporate*, the sheriff or other officer who received the writ, shall forthwith, upon receipt thereof, make out a precept to each borough, town corporate, or place within his jurisdiction, where any members are to be elected, and within three days (and in the cinque ports six days) after receipt of the said writ, shall, by himself or his proper agent, deliver the precept to the officer to whom the execution thereof doth belong, and to no other person; which officer shall indorse the day of his receipt thereof, in presence of the party of whom he received the same; and shall forthwith cause public notice to be given of the time and place of election, and shall proceed in the election within eight days after receipt of the precept, and give four days notice at least of the day appointed for the election. 7 & 8 W. c. 25. s. 1. 10 & 11 W. c. 7.

4. In

4. In a *city or town, being a county of itself*, the sheriff shall forthwith, on receipt of the writ, give public notice of the time and place of election, and proceed to election thereupon, within eight days after receipt of the writ, and give three days notice thereof at least, exclusive of the day of receipt of the writ, and of the day of election. 19 G. 2. c. 28.

## 2. *Qualification of the candidates.*

1. No member shall sit or vote in either house of parliament, unless he be *twenty-one years of age*. 4 Inst. 47.

2. In order to prevent *papists* from sitting in either house of parliament, it is enacted, that no person shall sit or vote in either house till he hath, in presence of the house, taken the oaths of allegiance, supremacy, and abjuration, and subscribed and repeated the declaration against transubstantiation, and invocation of saints, and the sacrifice of the mass. 30 C. 2. st. 2. c. 1. 1 G. c. 13.

3. No person born out of *Great Britain or Ireland*, or the dominions thereunto belonging (although he be naturalized and made a denizen, except such as be born of *English* parents) shall be capable to be a member of either house of parliament. 12 & 13 W. c. 2.

4. Sheriffs of counties, and mayors and bailiffs of boroughs, are not eligible in their respective jurisdictions, as being returning officers; but a sheriff of one county may be chosen knight of another. 1 Black. 175.

5. By several statutes, no persons concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury; nor any of the officers following, viz. commissioners of prizes, transports, sick and wounded, wine licences, navy, and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations; officers of *Minorca or Gibraltar*; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretaries of state, salt, stamps, appeals, wine licences, hackney coaches, hawkers and pedlars; nor any persons that hold any new office under the crown, created since 1705, are capable of being elected. 1 Black. 175.

But this shall not extend to, or exclude the treasurer or comptroller of the navy, secretaries of the treasury, secretary



tary to the chancellor of the exchequer, secretaries of the admiralty, under-secretary of state, deputy paymaster of the army, or any person holding any office for life, or for so long as he shall behave himself well in his office. 15 G. 2. c. 22.

If any member shall accept an office of profit under the crown, except an officer in the army or navy accepting a new commission, his election shall be void; but he shall be capable of being re-elected. 6 An. c. 7. f. 26.

6. No person having a pension from the crown during pleasure, shall be capable of being elected. 6 An. c. 7. f. 25.

7. No person shall be capable to sit or vote in the house of commons for a county, unless he hath an estate freehold or copyhold, for his life or some greater estate, of the clear yearly value of 600*l.*; nor for a city or borough, unless he hath a like estate of 300*l.* And any other candidate, or two electors, may require him to make oath thereof at the time of election, or before the day of the meeting of the parliament; and before he shall vote in the house of commons, he shall deliver in an account of his qualification, and the value thereof, under his hand, and make oath of the truth of the same. But this shall not extend to the eldest son or heir apparent of a peer, or of any person qualified to serve as knight of a shire, nor to the members of either of the two universities. 9 An. c. 5. 33 G. 2. c. 20.

### 3. *Qualification of the electors.*

1. No person shall be admitted to vote, under the age of twenty-one years. 7 & 8 W. c. 25.

2. By several acts, every elector of a knight of a shire shall have freehold to the value of 40*s.* a year within the county; which is to be clear of all charges and deductions, except parliamentary and parochial taxes. 1 Black. 172.

3. No person shall vote in right of any freehold granted to him fraudulently to qualify him to vote. Fraudulent grants are such as contain an agreement to re-convey, or to defeat the estate granted; which agreements are enacted to be void, and the estate vested absolutely in him to whom it is so granted. 1 Black. 173.

4. No person shall vote for a knight of a shire, without having been in the actual possession of the estate for which he

he votes, or in the receipt of the rents or profits thereof to his own use, above twelve calendar months; unless it came to him by descent, marriage, marriage settlement, devise, or promotion to a benefice or office. 18 G. 2. c. 18. *f.* 5.

5. No person shall vote in respect of an annuity or rent charge, unless registered with the clerk of the peace twelve calendar months before. 3 G. 3. c. 24.

6. In mortgaged or trust estates, the mortgagor, or *cestuy que trust*, shall vote; and not the trustee or mortgagee, unless they be in actual possession. 7 & 8 W. c. 25. *f.* 7.

7. All conveyances to multiply voices, or to split votes, shall be void; and no more than one voice shall be admitted for one and the same house or tenement. *Id.*

8. No person shall vote for a knight of a shire, in respect of any messuages, lands, or tenements, which have not been charged to the land tax six calendar months before. 20 G. 3. c. 17. *f.* 1, 2.

9. No person shall vote for any estate holden by copy of court roll. 31 G. 2. c. 14.

10. The right of election in *boroughs* is various, depending intirely on the several charters, customs, and constitutions of the respective places; but by the 2 G. 2. c. 24. this right of voting for the future shall be allowed according to the last determination of the house of commons concerning it.

And no person, claiming to vote in right of his being a *freeman* of a corporation, shall be allowed, unless he hath been admitted to his freedom twelve calendar months before. 3 G. 3. c. 15.

And no person shall vote at any election for any city or borough, as an inhabitant paying scot and lot, or inhabitant householder, housekeeper, and pot-waller, legally settled or resiant, or as an inhabitant thereof, unless he hath been *bona fide* an inhabitant thereof for six calendar months previous to the day of election; and such vote shall be void, and he shall forfeit 20*l.* except possessions acquired by descent, devise, marriage, or marriage settlement, or promotion to an office or benefice: and this shall relate only to persons who claim to vote in manner aforesaid. 26 G. 3. c. 100. *f.* 1, 2.

4. *Election.*

1. IN order that elections may be free, the secretary at war, on notice given to him by the clerk of the crown, of the writ being issued, shall send orders for the removal of soldiers, one day at least before the election, to the distance of two or more miles, and not to return till one day after the poll shall be closed. But this not to extend to the guards, nor to any castle or fortified place where a garrison is usually kept, nor to any officer or soldier having right to vote at such election. 8 G. 2. c. 30.

2. By vote of the house of commons, to whom alone belongs the power of determining contested elections, no lord of parliament, or lord lieutenant of a county, hath any right to interfere in the election of commoners. And, by several statutes, if any officer of the excise, customs, post-office, stamps, or certain other branches of the revenue, shall meddle in elections, by persuading or dissuading any voter, he shall forfeit 100*l.* and be disabled to hold any office. 1 Black. 178.

3. And to prevent bribery and corruption, no candidate, after teste of the writ of summons, or after a place becomes vacant in parliament time, shall, by himself, or by any other ways or means on his behalf, or at his charge, before his election, directly or indirectly, give, or promise to give, to any elector, any money, meat, drink, provision, present, reward, or entertainment, to or for any such elector in particular; or to any county, city, town, borough, port, or place in general; in order to his being elected, on pain of being incapacitated. 7 & 8 W. c. 4.

4. And the sheriff shall erect, at the expence of the candidates, such number of *booths* for taking the poll, as the candidates, or any of them, shall, three days at least before the commencement of the poll, desire, not exceeding the number of hundreds or other like division, and not exceeding fifteen in the whole; and shall affix, on the most public part of each, the name of the hundred for which such booth is designed; and shall make out a list for each booth of the several towns, parishes, and hamlets, wholly or in part within such hundred; and shall, on request, deliver a copy to any of the candidates, paying 2*s.* 18 G. 2. c. 18.

5. And the sheriff shall appoint such number of *clerks*, as he shall think fit, for taking the poll in the presence of himself

self or deputy ; which clerks, before they begin to take the poll, shall be sworn by the sheriff or under-sheriff, truly and indifferently to take the poll, and to set down the name of each freeholder, and the place of his freehold, and for whom he polls ; and to poll no freeholder who is not sworn, if so required by any of the candidates. 7 & 8 W. c. 25. f. 3.

And where there are several booths, the sheriff shall appoint clerks at each booth ; who shall be paid by the candidates, not exceeding each one guinea a day. 18 G. 2. c. 18.

And he shall admit one person for each candidate to be *inspector* of the clerks. 7 & 8 W. c. 25. f. 3.

6. Also the sheriff shall allow a *cheque book* for every poll book for each candidate, to be kept by their inspectors at the place of taking the poll. 19 G. 2. c. 28.

7. Before the returning officer shall proceed to the election, he shall, immediately after the reading of the writ, take and subscribe the following oath, to be administered by a justice of the peace, or any three electors : " I A. B. do solemnly swear, that I have not, directly nor indirectly, received any sum or sums of money, office, place, or employment, gratuity, or reward, or any bond, bill, or note, or any promise of gratuity whatsoever, either by myself, or any other person to my use, or benefit, or advantage, for making any return at the present election of members to serve in parliament ; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes ;" which oath shall be entered amongst the records of the sessions. 2 G. 2. c. 24. f. 3.

And if the election shall not be determined upon view, with the consent of the freeholders there present, but a poll shall be demanded, the same shall commence on the day on which such demand is made, or upon the next day at farthest, (unless it be *Sunday*, and then on the day after,) and shall be regularly proceeded in from day to day (*Sundays* excepted) until the same be finished, and shall not continue more than fifteen days at most, (*Sundays* excepted ; ) and the poll shall be kept open seven hours at least each day, between eight in the morning and eight in the evening. 25 G. 3. c. 84. f. 1. 3.

8. And every *freeholder*, before he is admitted to poll for a knight of the shire, shall, if required by a candidate, or  
any



any elector, take the following oath (to be administered by the sheriff, under-sheriff, or one of the sworn clerks):  
 " You shall swear (*or, being one of the people called Quakers,*  
 " you shall solemnly affirm) that you are a freeholder in the  
 " county of                      and have a freehold estate, consisting of  
 "                      [*specifying the nature of it, whether messuage, land, rent,*  
 " *tithe, or what else; and if such freehold estate consists in mes-*  
 " *suages, lands, or tithes, then specifying in whose occupation; and*  
 " *if in rent, then specifying the names of the owners or possessors of*  
 " *the lands or tenements, out of which such rent is issuing*] lying or  
 " being at                      in the county of                      of the clear yearly  
 " value of 40s. over and above all rents and charges payable  
 " out of, or in respect of the same; and that you have been  
 " in the actual possession or receipt of the rents or profits  
 " thereof, for your own use, above twelve calendar months,  
 " or that the same came to you within the time aforesaid,  
 " by descent, marriage, marriage-settlement, devise, or  
 " promotion to a benefice in the church, or by promotion to  
 " an office; and that such freehold estate has not been grant-  
 " ed or made to you fraudulently, on purpose to qualify you  
 " to give your vote; and that the place of your abode is  
 " at                      in                      and that you are twenty-one years  
 " of age, as you believe; and that you have not been polled  
 " before at this election." And if he falsifies, he shall suffer  
 as in case of perjury. 18 G. 2. c. 18. s. 1.

And the sheriff and clerks shall enter not only the place of his freehold, but also the place of his abode, as he shall declare the same at the time of giving his vote; and shall enter *jurat* against the name of every such voter who hath taken the oath. 10 An. c. 23. s. 5.

And the aforesaid act of the 18 G. 2. c. 18. shall extend to cities and towns, that are counties of themselves, where persons have a right to vote in respect of a freehold of 40s. a year; but not where they have a right to vote in respect of burgage tenure, or where the right to vote for a freehold doth not require the same to be of 40s. a year. 19 G. 2. c. 28.

9 And the voter, if required by either of the candidates, or any two electors, shall, before he votes, take the oath against bribery, to be administered by the returning officer, or his deputy, as follows: " I A. B. do swear (*or, being*  
 " *one of the people called Quakers, do solemnly affirm*) I have  
 " not received or had by myself, or any person whatsoever  
 " in trust for me, or for my use and benefit, directly or  
 " indirectly, any sum or sums of money, office, place, or  
 " employ-

"employment, gift or reward, or any promise or security  
 "for any money, office, employment, or gift, in order to  
 "give my vote at this election; and that I have not before  
 "been polled at this election." 2 G. 2. c. 24. f. 1.

And if any person shall take any money or other reward,  
 or contract or agree for any money, gift, office, employ-  
 ment, or other reward, to give, or forbear to give his vote,  
 he shall forfeit 500*l.* f. 7.

And in all cases where no oath of qualification other than  
 the said oath against bribery, or the oaths of allegiance,  
 supremacy, and abjuration, can now by law be required,  
 every person claiming to vote, shall, (if required as afore-  
 said,) before he is admitted to poll, take the oath following:

"I do swear (*or affirm*) that my name is *A. B.*, and  
 "that I am                      and that the place of my abode is at  
 "                      in the county of                      and that I have not before  
 "polled at this election; and that I verily believe my-  
 "self to be of the full age of twenty-one years." 25 G. 3.  
 c. 84. f. 5.

#### 5. *Return.*

1. AFTER the election, the names of the persons chosen  
 shall be written in an indenture, under the seals of the  
 electors, and tacked to the writ. 7 H. 4. c. 15.

2. The returning officer in boroughs, returns his precept  
 to the sheriff, with the persons elected by the majority.  
 And the sheriff returns the whole, together with the writ  
 for the county, and the knights elected thereupon, to the  
 clerk of the crown in chancery, before the day of meeting,  
 if it be a new parliament; or within fourteen days after the  
 election, if it be an occasional vacancy; and this, under the  
 penalty of 500*l.* And if the sheriff doth not return such  
 knights only as are duly elected, he forfeits by the ancient  
 statutes 100*l.*; and the returning officer of a borough, for  
 a like false return, 40*l.* And by later statutes, they are  
 liable to an action at the suit of the party duly elected, and  
 to pay double damages. And the like remedy shall be against  
 an officer making a *double* return. 1 Black. 180. 7 & 8 W.  
 c. 7.

3. And the sheriff shall deliver copies of the poll to any  
 person desiring the same, paying a reasonable charge for  
 writing thereof. 7 & 8 W. c. 25. f. 6.

4. And

4. And he shall, within twenty days after the election, deliver over upon oath, (to be administered by two justices,) all the poll books to the clerk of the peace, without alteration; to be kept amongst the records of the sessions. 10 *An. c. 23. f. 5.*

And the check polls, as well as the original polls taken by the sheriff or his clerks, must be lodged with the clerk of the peace: as in the *Radnorshire* election, the sheriff swore a clerk, and each of the candidates two others, and five polls were taken, which were delivered to the sheriff; he carried in that only which was taken by his clerk, as being the original poll, and the others only checks; the court held, that all the books ought to have been carried in; and granted an information against the sheriff for not doing it. 2 *Str. 1048. R. v. Davis.*

5. On petition to the house of commons, complaining of an undue election, forty-nine members of the house of commons shall be chosen by ballot, out of whom each party shall alternately strike out one, till they be reduced to the number of thirteen; who, together with two more, of whom each party shall nominate one, shall be a select committee, for determining such controverted election. 10 *G. 3. c. 16. 11 G. 3. c. 42.*

#### 6. *Manner of proceeding in parliament.*

1. THE method of making laws is much the same in both houses. In the house of commons, in order to bring in a bill, if the relief sought by it is of a *private* nature, it is first necessary to prefer a petition; which must be presented by a member, and usually sets forth the grievance desired to be remedied. This petition, when founded on facts that may be in their nature disputed, is referred to a committee of members, who examine the matter alleged, and accordingly report it to the house; and then (or otherwise upon the mere petition) leave is given to bring in the bill. In *public* matters, the bill is brought in upon motion made to the house, without any petition at all. 1 *Black. 181.*

2. If the bill begins in the house of lords, if of a *private* nature, it is referred to two of the judges, to make report. *Id. 182.*

3. After the second reading, the bill is *committed*, that is, referred to a committee; which is either selected by the house, in matters of small importance; or else, upon a bill of

of consequence, the house resolves itself into a committee of the whole house. A committee of the whole house is composed of every member; and to form it, the speaker quits the chair, and may sit and debate as a private member, another member being appointed chairman for the time. In these committees the bill is debated clause by clause, amendments made, and sometimes the bill intirely new modelled. Upon the third reading, amendments are sometimes again made to it; and if a new clause be added, it is done by tacking a separate piece of parchment on the bill, which is called a rider. 1 Black. 182.

### 7. *Privilege of parliament.*

By the common law, a member of parliament shall have the privilege of parliament, not only for himself and his servants, to be freed from arrest, *subpœna*, *citation*, and the like; but also for his horses and goods to be free from distresses: but for treason, felony, and breach of the peace, there can be no privilege. 4 Inst. 24, 25.

But by the 10 G. 3. c. 50. any person may commence and prosecute any action in any court of record, or court of equity, or of admiralty, or in causes matrimonial and testamentary, against any peer or member of the house of commons, or any of their menial or other servants; and no proceedings thereupon shall be delayed under colour of such privilege: provided, that this shall not subject the person of any member of the house of commons to be arrested or imprisoned on any suit or proceedings. And the court out of which the writ proceeds, may order the issues levied by distringas from time to time, to be sold, and the money arising thereby, to be applied to pay such costs to the plaintiff as the court shall think just, and the surplus to be detained till the defendant shall have appeared, or other purpose of the writ be answered. And obedience may be enforced to any rule of court against any person intitled to privilege by distress infinite, if the plaintiff shall chuse to proceed in that way.

### 8. *Adjournment, prorogation, and dissolution.*

1. *Adjournment* is a continuance of the session from one day to another; and this is done by the authority of each house separately every day; and sometimes for a fortnight or a month together, as at *Christmas* or *Easter*; or upon



other particular occasions: but the adjournment of one house is no adjournment of the other. 1 *Black.* 186.

2. *Prorogation* is the continuance of the parliament, not from one day to another, but from one session to another. And this is done by the royal authority. And by this, both houses are prorogued at the same time; it not being a prorogation of the house of lords or commons, but of the parliament. The session is never understood to be at an end until a prorogation; though unless some act be passed, or some judgment given in parliament, it is, in truth, no session at all. *Id.*

3. *Dissolution* of the parliament puts an end to it altogether: and this may be effected either by the king, who by his prerogative may dissolve the parliament whenever he pleases, or by the death of the king, or by the expiration of the time for which they were convened. *Id.*

By the 1 *G. ft.* 2. c. 38. the parliament shall have continuance for seven years, to be accounted from the day on which, by the writ of summons, they shall be appointed to meet; unless sooner dissolved by the king.

And by the 7 & 8 *W. c.* 25. and 6 *An. c.* 7. they shall not be immediately dissolved by the king's death, but shall continue further for six months, unless sooner dissolved by the successor.

**PAROL DEMURRER**, is a privilege allowed to an infant, that the action may stay till he comes of full age. In many real actions brought against, or by an infant under the age of twenty-one years, and also in actions of debt brought against him as heir to any deceased ancestor, either party may suggest the nonage of the infant, and pray that the proceedings may be deferred till his full age, or, according to the legal phrase, that *the infant may have his age*, and that the *parol may demur*; that is, that the pleadings may be stayed; and then they shall not proceed till his full age, unless it be apparent that he cannot be prejudiced thereby. But by the statutes 3 *Ed. 1. c.* 46. and 6 *Ed. 1. c.* 2. in writs of entry *sur disseisin* in some particular cases, and in actions *ancestral* brought by an infant, the parol shall not demur; otherwise he might be deforced of his whole property, and even want a maintenance till he came of age. So likewise, in a writ of dower, the heir shall not have his age; for it is necessary that the widow's claim be immediately determined, else she may want a present subsistence. Nor shall an

an infant patron have it in a *quare impedit*, since the law holds it necessary and expedient that the church be immediately filled. 3 *Black.* 300.

**PARRICIDE**, is the murder of one's father or mother; for which the law hath provided no peculiar punishment different from that of common murder, presuming probably, that no person, unless totally deprived of reason, can be guilty of it.

**PARSON**, *persona*, properly signifies the rector of a parish church; because, during the time of his incumbency, he represents the church, and, in the eye of the law, sustains the *person* thereof, as well in suing, as in being sued, in any action touching the same. He is in himself a body corporate, in order to protect and defend the rights of the church by a perpetual succession. He is sometimes called the *rector*, or governor of the church; but *parson* is the more proper and legal appellation. 1 *Inst.* 300. When a parson is instituted and inducted into a rectory, he is then, and not before, in full and complete possession, and is called in law, *persona impersonata*, or *parson imparsonnee*. 1 *Black.* 391.

**PARTITION**, is a dividing of lands descended by the common law, or by custom, among coheirs or parceners, where there are two at the least. It may be made by coparceners, jointenants, and tenants in common.

**PARTNERS**, are where two or more agree to come in, share and share alike, to any trade or bargain. And although generally, where an obligation is made to divers persons for one debt, he who surviveth shall have the whole; yet in case of joint traders it is otherwise; for the wares, merchandizes, debts, or duties, that they have as joint merchants or partners, shall not survive, but the share of him that dieth shall go to his executors. And this is by the law of merchants, which is part of the laws of this realm, for the advancement and continuance of commerce and trade. 1 *Inst.* 182.

So if there are two partners in trade, and judgment is recovered against one of them, his moiety of the goods in partnership only shall be taken in execution. *Show. Rep.* 174.

An agent or factor to joint merchants, must sue the survivor for the wages: and if he accounts, he shall deduct his charges out of the effects of both; but that which is clear upon the account stated, will belong to the survivor and to the administrator; but the survivor shall take the whole, and allow a moiety to the administrator: for it would cause great confusion if both should sue, one in his own, and the other in the right of another. *L. Raym.* 341.

**PASSAGE**, *passagium*, is, properly, over water, as a *way* is over land. It relates to the sea and great rivers: it is used for the hire that a man pays for being transported over the sea, or over any river. An immunity from this payment was granted to several of the religious houses by divers ancient charters.

**PASTURE**, common of, is a right of feeding one's beasts on another's land; for in those waste grounds which are called commons, the property of the soil is generally in the lord of the manor, as in common fields it is in the particular tenants. 2 *Black.* 32.

**PATRONAGE**, is the right of presentation to a church, or ecclesiastical benefice: it signifies to take the church into his protection. For when lords of manors first built churches on their own demesnes, and endowed them with lands or other possessions, they had of common right a power annexed of nominating ministers to officiate in such churches of which they were the founders, endowers, or patrons. 2 *Black.* 21.

**PAVIAGE**, is money paid towards the paving of streets or highways.

**PAUPERIS FORMA.** See **FORMA PAUPERIS.**

**PAWN**, (*pignus*), is a pledge or gage for surety of payment of money lent.

**PAWN-BROKER**, is one who lets out money upon pawn or pledge, whose office is regulated by divers statutes.

By the 25 G. 3. c. 48. every pawn-broker is required to take out a licence annually from the commissioners of the stamp duties.

duties. By 30 G. 2. c. 24. f. 4. & 29 G. 3. c. 57. f. 4. every person who shall take any goods by way of pawn or pledge, shall enter a description thereof in a book, and the money advanced thereon, at what time, and to whom, and deliver a duplicate thereof to such person, if required.

And where goods pawned shall be damaged through neglect of the pawn-broker, a justice of the peace may award a reasonable satisfaction to be deducted out of the principal and interest. f. 5. & 29 G. 3. c. 57. f. 18.

Persons buying or taking in pledge linen or apparel, intrusted to others to wash or mend, shall forfeit double the sum, and restore the goods. f. 6.

The sale of goods wrongfully gotten within *London* and *Westminster*, to any broker or pawn-taker, shall not alter the property. And such broker shall, upon request, declare what goods are come to his hands, on pain of forfeiting double value. 1 Ja. c. 21.

Persons offering goods to sale or pawn, not giving a good account of themselves, may be detained with the goods, and delivered over to a constable, to be carried before a justice, who may commit the party for further examination; and a justice, on application and oath of the owner whose goods are unlawfully pawned, may issue his warrant to search the suspected person's house; and the goods, if found, shall be restored to the owner. 30 G. 2. c. 24. f. 7, 8, 9.

Goods remaining unredeemed for two years [but by 29 G. 3. c. 57. f. 12. one year] may be sold, subject to an account for the overplus. f. 11.

**PAYMENT.** If a rent is reserved upon a lease of lands at four usual feasts in the year, the lessor shall have an action of debt after the first day of failure; because the same is accounted in law a reservation of parcel of the profits of the land: so that every quarter's rent is a several debt. So it is of a covenant or promise, or recognizance to pay 100*l.* at five several days after the first default. Yet if one lease a stock of cattle, or other *personal* goods, and the rent is to be paid at several days, the lessor must tarry until all the days are expired, because it is a personal contract. And so it is of a contract for payment of several sums of money. Where note a diversity between real and personal contracts. *Wood.* b. 2. c. 2.

When one is to pay rent at a certain day, he hath all that day until night to pay it; but so that the receiver may see



to tell it. And when a common person appoints no place of payment of his rent, the law appoints it to be on the land; but in the case of the king, the payment must be at the exchequer, or to his receiver. If a man is bound in an obligation to pay his rent at a day, he must seek out his landlord to pay him. *Id.*

Payment of money before the day, is in law payment at the day; for it cannot, in presumption of law, be any prejudice to him to whom the payment is made, to have his money before the time; and it appears by the party's receipt of it, that it is for his own advantage to receive it then, otherwise he would not do it. 5 Co. 117.

Upon pleading of payment at the day, it is good evidence to prove payment at any time *after* the day, and before action brought. 2 Lill. 287.

PEACE. The king, by his office and dignity royal, is the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the *king's peace*. All the great officers of state are general conservators of the peace throughout the kingdom, and may commit all breakers of it, or bind them in recognizances to keep it. As also the sheriff, coroner, constables, and tithingmen, are conservators of the peace within their own jurisdiction, and may apprehend all breakers of the peace, and commit them, till they find sureties to keep the peace. 1 Black. 350.

By the ancient *Saxon* constitution, these sureties of the peace were always at hand, by means of king *Alfred's* institution of decennaries or frankpledges, wherein the whole neighbourhood or tithing were mutually pledges of each other's good behaviour. But this falling into disuse, there hath succeeded to it the method of making suspected persons find particular and special sureties for their future conduct. 4 Black. 252.

Any justices of the peace, by virtue of their commission, or those who by virtue of their office are conservators of the peace, may demand such security according to their own discretion, or at the request of any other, on due cause shewn. 4 Black. 253.

When the courts of justice are open, and the judges and ministers of the same may by law protect men from wrong and violence, and distribute justice to all, it is said to be the

time of peace. So when, by invasion, insurrection, rebellion, or such like, the peaceable course of justice is disturbed and stopped, so that the courts of justice are, as it were, shut up, then it is said to be time of war. If a man be disseised in time of peace, and a descent is cast in time of war, this shall not take away the entry of the disseisee. In all real actions, the explees or taking of the profits are laid in time of peace; for if they were taken in time of war, they are not accounted of in law. 1 *Inst.* 249.

**PECULIARS**, are places exempt from the jurisdiction of the ordinary of the diocese; and are of several sorts: 1. Royal peculiars; which are the king's free chapels, and are exempt from any jurisdiction but the king's. 2. Peculiars of the archbishops, exclusive of the bishops and archdeacons, which arose from a privilege they had to enjoy jurisdiction in such places where their seats and possessions were. Of these, there are upwards of an hundred in the province of *Canterbury*, wherein jurisdiction is administered by several commissaries, the chief of whom is the dean of the arches, for the thirteen peculiars of the archbishop within the city of *London*. 3. Peculiars of bishops, exclusive of the jurisdiction of the bishop of the diocese in which they are situate. 4. Peculiars of bishops in their own dioceses, exclusive of archidiaconal jurisdiction. 5. Peculiars of deans, deans and chapters, prebendaries, and the like; which are places wherein, by ancient compositions, the bishops have parted with their jurisdiction as ordinaries, to these societies.

**PEDAGE**, *pedagium*, is money given for a *foot* passage through any district or place.

#### PEERS, PEERAGE:

1. *Peers*, *pares*, signify generally by the common law, those that are impanelled in an inquest for the trial of any person, and convicting or clearing him of the offence for which he is called in question: and by *magna charta*, every one is to be tried by his peers or equals. But in common acceptation, the word peers denotes the nobility of the kingdom only, or lords of parliament, consisting of dukes, marquesses, earls, viscounts, and barons. And the reason why they are called *peers* is, for that notwithstanding there be a distinction of dignities, yet in all public actions they

are equal; as in their votes in parliament, and in passing upon the trial of any nobleman.

2. The right of peerage seems to have been originally territorial; that is, annexed to lands, honors, castles, and the like; the proprietors and possessors of which were (in right of those estates) allowed to be peers of the realm, and were summoned to parliament to do suit and service to their sovereign; and, when the land was alienated, the dignity passed with it as appendant. Thus the bishops sit still in the house of lords in right of succession to certain ancient baronies annexed, or supposed to be annexed, to their episcopal lands. 1 *Black.* 399.

But afterwards, when alienations grew to be frequent, the dignity of peerage was confined to the lineage of the party ennobled, and instead of territorial, became personal. Actual proof of a tenure by barony became no longer necessary to constitute a lord of parliament; but the record of the writ of summons to him, or his ancestors, was admitted as a sufficient evidence of the tenure. *Id.* 400.

3. Peers are now created either by *writ*, or by *patent*; for those who claim by prescription must suppose either a writ or patent made to their ancestors, though by length of time it may be lost. The creation by *writ*, or the king's letter, is a summons to attend the house of peers, by the style and title of that barony, which the king is pleased to confer; that by *patent*, is a royal grant to a subject of any dignity and degree of peerage. The creation by writ is the more ancient way; but a man is not ennobled thereby, unless he actually take his seat in the house of lords; and therefore the most usual, because the surest, way is to grant the dignity by patent, which enures to a man and his heirs, according to the limitations thereof, though he never himself makes use of it. *Id.*

4. In criminal cases, a nobleman shall be tried by his peers. But it is said, that this doth not extend to bishops; who, though they are lords of parliament, and sit there by virtue of their baronies which they hold in right of the church, yet are not ennobled in blood, and consequently not peers of the realm. But this trial by peers is to be understood only at the suit of the king, upon an indictment of high treason, petit treason, felony, or misprision thereof; but in case of, a præmunire, riot, or the like, and generally for all other crimes out of parliament (unless otherwise specially provided for by statute, as it is in many instances) though

though it be at the suit of the king, a nobleman shall not be tried by his peers, but by the freeholders of the county.

3 *Inst.* 30. 2 *Haw.* 424.

5. Peers shall have the benefit of clergy for the first offence of felony, without being burned in the hand. 1 *Ed.* 6. c. 12.

6. A peer sitting in judgment gives not his verdict upon oath, like an ordinary jurymen, but upon his honour. He answers to bills in chancery upon his honour, and not upon his oath. But when he is examined as a witness, either in civil or criminal cases, he must be sworn. 1 *Black.* 402.

7. To spread false reports of peers or noblemen is much more penal than of common persons; scandal against them being called by the peculiar name of *scandalum magnatum*, and subjected to peculiar punishment by divers ancient statutes. *Id.*

8. A peer or peeress cannot be arrested in civil cases.

9. A peer or peeress cannot be bound over to the peace, or good behaviour, in any other place than the courts of king's bench or chancery. 1 *Haw.* 127.

10. Peers are not obliged to attend at the tourn or leet.

11. No peer hath privilege against being compelled by process of the courts of *Westminster-hall* to pay obedience to a writ of *habeas corpus* directed to him. *Burr. Mansf.* 632.

12. Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken; otherwise he might take advantage of his own contumacy. 3 *Inst.* 31.

13. By an order of the house of lords, May 11, 1767, the heralds are directed to take exact accounts, and preserve regular entries, of all peers and peeresses of *England*, and their respective descendants; and an exact pedigree of each peer and his family shall, on the day of his first admission, be delivered to the house by the principal king at arms. 3 *Black.* 106.

PEN, Brit. a hill or mountain, a head. So in the names of places; *Penrith*, a red hill; *Penruddock*, from the name of the owner: so *Penburrock*, a heap of stones upon a hill.

PENAL STATUTES must be construed strictly; as, where the statute 1 *Ed.* 6. c. 12. having enacted, that those who are convicted of stealing *horses* should not have the benefit



benefit of clergy, the judges conceived that this did not extend to him that should steal but one horse, and therefore procured an act for that purpose in the year following. 1 *Black.* 88.

All actions upon penal statutes, for any forfeiture limited to the king, shall be brought within two years after the offence committed; if limited to the king and prosecutor, then within one year: and if it is not sued for in that one year, then the king may sue for the same within two years after the expiration of that one year. 31 *Eliz. c. 5.*

**PENANCE**, (*pœnitentia*,) is an ecclesiastical punishment, used in the discipline of the church, which affects the body of the penitent, by which he is obliged to give a public satisfaction to the church for the scandal he hath given by his evil example. So in the primitive times, they were to give testimony of their reformation before they were re-admitted into the Christian society. In the case of incontinence, the offender is usually enjoined to do a public penance in the parish church, bareheaded and barefooted, in a white sheet, and to make open profession of his crime in a prescribed form of words; which is augmented or moderated, according to the quality of the offence, and the discretion of the judge. So in smaller faults and scandals, a public satisfaction or penance, as the judge shall decree, is to be made before the minister, churchwardens, or some of the parishioners, respect being had to the quality of the offence, and circumstances of the fact; as in case of defamation, or laying violent hands on a clerk, or the like. And as these censures may be moderated by the judge's discretion, according to the nature of the offence, so also they may be totally altered by a commutation of penance; and this hath been the ancient privilege of the ecclesiastical judge, to admit that an oblation of a sum of money, for pious uses, shall be accepted in satisfaction of public penance. But penance must be first enjoined, before there can be a commutation; or otherwise it is a commutation for nothing. *Godolph. Repert. Canon. Append.* 18.

**PENSION.** No person having a pension from the crown, during pleasure, or for any term of years, is capable of being elected a member of the house of commons. 1 *Black.* 176.

To receive a pension from a foreign prince or state, without leave of our king, hath been held to be criminal; because it may incline a man to prefer the interest of such foreign prince to that of his own country. 1 *Harw.* 58.

By statute 31 G. 1. c. 22. a duty of 1*s.* a pound is laid upon all perquisites of offices and pensions, payable by the crown. 1 *Black.* 326.

**PENSION ECCLESIASTICAL**, is a certain sum of money, paid to a clergyman in lieu of tithes: and some churches have settled on them annuities or pensions, payable by other churches. It may be sued for in the ecclesiastical court; and a bishop may sue for a pension before his chancellor, and an archdeacon before his official. *Wood. b. 2. c. 2.*

If an incumbent leaves arrearages of a pension, the successor shall be answerable; because the church itself is charged, into whatever hand it comes. *Crö. El.* 810.

**PENTECOSTALS**, were oblations usually paid to the church at the time of pentecost; from whence they were also called *Whitsun-farthings*. The payment of these is now out of use, except in some particular churches by custom.

**PER**; entry *sur disseisin in the per.* See **ENTRY**.

**PERFUMERY**. By the 26 G. 3. c. 49. a stamp duty is imposed on perfumery, according to the price the same shall be sold at. And every person who shall deal therein, shall take out a licence annually from the stamp-office.

**PERJURY**, by the common law, is a wilful false oath by one, who, being lawfully required to depose the truth in a judicial proceeding, swears absolutely, in a matter material to the point in question, whether he be believed or not. 3 *Inst.* 164.

It must be in a judicial proceeding; therefore no oath whatsoever, taken before persons acting merely in a private capacity; or before those who take upon them to administer oaths, without legal authority; or before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them; or even before those who take upon them to administer justice by virtue of an authority, seemingly colourable, but in truth unwarranted.

ed, and merely void; can amount to perjury, but is altogether idle and of no force. 1 *Haw.* 174.

And though an oath be given by him that hath lawful authority, and the same be broken, yet if it be not in a judicial proceeding, it is not perjury; because such oaths are general and extrajudicial; but it serves for aggravation of the offence: such are general oaths given to officers or ministers of justice, the oaths of fealty and allegiance, and such like. Thus, if an officer commit extortion, it is against his general oath, but yet not perjury, because not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may serve for aggravation. 3 *Inst.* 166.

*Subornation* of perjury, by the common law, is an offence in procuring a person to take a false oath, amounting to perjury, who actually taketh such oath. 1 *Haw.* 177.

But if the person incited to take such an oath, do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet he is liable to be punished, not only by fine, but also by infamous corporal punishment. *Id.*

To convict a man of perjury, a probable evidence is not enough, but it must be a strong and clear evidence; and the witnesses must be more numerous than those on the side of the defendant; for otherwise, it is only oath against oath. 10 *Mod.* 194.

And the party prejudiced by the perjury, shall not be admitted to prove the perjury. *L. Raym.* 396.

By the statute 5 *El. c. 9.* the punishment of *subornation* of perjury, if the prosecution is on that statute, is forfeiture of 40*l.*; and if the offender is not able to pay, he shall be imprisoned for half a year, and stand on the pillory one hour. The punishment of *perjury* by the same statute is, forfeiture of 20*l.* and imprisonment for six months; and if the offender is not able to pay the 20*l.* he shall be set on the pillory, and have both his ears nailed. And if the prosecution is at the common law, no less punishment shall be set than is contained in this statute.

And the judge, if he sees cause, may order the offender to be sent to the house of correction, not exceeding seven years, to be kept to hard labour; or otherwise to be transported for any term not exceeding seven years. 2 *G. 2. c. 25.*

The judge, sitting the court, or within twenty-four hours after, may direct a prosecution for perjury, and assign counsel

counsel to the prosecutor, who shall do their duty *gratis*.  
23 *G. 2. c. 11.*

A person convicted of perjury, is disabled from being a juror or witness. 2 *Haw. 287, 433.*

If a person calleth another *perjured* man, he may have an action upon the case against him, because it must be intended contrary to his oath in a judicial proceeding; but for calling him a *forsworn* man, no action lies, because the forswearing may be extrajudicial. 3 *Inst. 166.*

**PERNANCY**, (from the French *prendre*, to take,) is a taking or receiving; as a pernor of profits, is he who receives the profits of lands; tithes in pernancy, are tithes taken, or that may be taken in kind.

**PERPETUATING** the testimony of witnesses is, where the witnesses are old and infirm, and one of the parties institutes a suit to perpetuate their testimony; for it may be a man's antagonist only waits for the death of some of them to begin his suit. This is most frequent where lands are devised by will away from the heir at law; and the devisee, in order to perpetuate the testimony of the witnesses to such will, exhibits a bill in chancery against the heir, and sets forth the will *verbatim* therein, suggesting that the heir is inclined to dispute its validity; and then, the defendant having answered, they proceed to issue as in other cases, and examine the witnesses to the will; after which, the cause is at an end, without proceeding to any decree, no relief being prayed by the bill; but the heir is intitled to his costs, even though he contests the will. This is what is usually meant by proving a will in chancery. 3 *Black. 450.*

**PERPETUITY** is, where if all that have interest join in the conveyance, yet they cannot bar or pass the estate; for if, by concurrence of all having interest, the estate may be barred, it is no perpetuity. 1 *Cha. Ca. 213.*

A perpetuity is a thing odious in law, and destructive to the public; tending to put a stop to commerce, and prevent the circulation of the property of the kingdom; for the defeating whereof, the method of common recoveries was invented. 12 *Mod. 282.*

**PER QUOD**, are words respecting any special damage; as if a man's title to his land be slandered, whereby he brings  
his



his action for damages, he must set forth specially, *per quod*, (that is, whereby,) he lost an opportunity of selling it. If a man brings an action against another for beating his servant, he must say *per quod* he lost his service.

PERRY. See CYDER.

PERSONA IMPERSONATA, *parson impersonate*, is the rector that is in possession of a church parochial, be it presentative or impropriate, and of whom the church is full. 1 *Inst.* 300.

PERSONAL ACTIONS, are such whereby a man claims a debt, or personal duty or damages in lieu thereof; and likewise, whereby a man claims a satisfaction in damages for some injury done to his person or property. The former are said to be founded on contracts, the latter upon injuries and wrongs. Of the former nature, are all actions upon debt or promises; of the latter, all actions for trespasses, nuisances, assaults, defamatory words, and the like. Of this latter sort, for personal injuries and wrongs, when the person dieth, the action dieth with him, and cannot be revived either by or against executors or administrators. But for debt, or other personal duty, where the matter ariseth from contract, though the suit shall abate by the death of either of the parties, yet the right being transmissible to the representatives, the action may be revived by and against the executors or administrators respectively. 3 *Black.* 117. 302.

PERSONAL TITHES, are such profits as do arise by the honest labour and industry of man employing himself in some personal work, artifice, or negociation; being the tenth part of the clear gain, after charges deducted. *Watf. c.* 49.

PERSONATING, is to represent one by a fictitious or assumed character, so as to pass for the person represented. By statute 21 *J. c.* 26. to acknowledge any fine, recovery, deed inrolled, statute, recognizance, bail, or judgment, in the name of another person, not privy to the same, is felony, without benefit of clergy. As is also, by 31 *G. 2. c.* 10. the personating any seaman in his majesty's service, or his executors or administrators, in order to obtain his wages or other allowance.

PETER.

**PETER-PENCE**, was an annual tribute of one penny, paid at *Rome*, out of every family, at the feast of *St. Peter*. And this, *Ina* the Saxon king, when he went in pilgrimage to *Rome*, about the year 740, gave to the pope, partly as alms, and partly in recompence of a house erected in *Rome* for *English* pilgrims. And this continued to be paid generally, until the time of king *Henry* the eighth, when it was enacted, that from henceforth no person shall pay any pensions, *Peter-pence*, or other impositions, to the use of the bishop or see of *Rome*.

**PETIT LARCENY.** See **LARCENY**.

**PETIT SERJEANTY**, is where a man holds his land of the king, to render to him yearly, a bow, a sword, a lance, a pair of gloves of maile, a pair of gilt spurs, or such other small things belonging to war: and such service is but focage in effect, because such tenant, by his tenure, ought not to go, nor do any thing in his proper person, but to render and pay yearly certain things to the king, as if a man ought to pay a rent. *Litt.* 160.

**PETIT TREASON.** See **TREASON**.

**PETITIONING.** By the 13 & 14 C. 2. *§* 1. c. 5. no petition to the king, or to either house of parliament, for any alteration in church or state, shall be signed by above twenty persons, unless the matter thereof be approved by three justices of the peace, or the major part of the grand jury, in the country; and in *London*, by the lord mayor, aldermen, and common council; nor shall any petition be presented by more than ten persons at a time. But under these regulations, it is declared by the statute 1 W. *§* 2. c. 2. that the subject hath a right to petition, and that all commitments and prosecutions for such petitioning, are illegal. 1 *Black.* 143.

**PEWS**, in a church, are somewhat of the nature of heir-looms, which may descend by custom immemorial, from the ancestor to the heir, without any ecclesiastical concurrence. 2 *Black.* 429.

**PHYSICIANS.** By statute 14 & 15 H. 8. c. 5. physicians in *London*, and within seven miles thereof, are incorporated,

porated, with power to make statutes for the government of the society; and no physician shall practise within the said limits, till admitted by the president and community under their common seal. And four censors are to be chosen yearly, who shall have the ordering of the practitioners within the said limits, and the supervising of medicines, with power to fine and imprison. And no person shall be allowed to practise in physic out of *London*, until he shall have been examined at *London*, by the president and three of the elects of the said society, and have letters testimonial of their approving and examination; except he be a graduate of *Oxford* or *Cambridge*.

**PICKAGE**, is a payment to the lord of the soil, for liberty to pick up or break the ground, in order to erect a stall in a fair or market.

**PIEPOUDRE** court, *curia pedis pulverizati*, is commonly said to be so called from the *dusty feet* of the suitors; others derive it, with more probability, from the old French, *pie poldreaux*, a pedlar; being the court of such petty chapmen as resort to fairs or markets. It is the most expeditious court of justice known to this kingdom. It is a court of record, incident to every fair and market, whereof the steward of him who owns, or has the toll of, the fair or market is the judge. 3 *Black.* 32.

It was instituted to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one. So that the injury must be done, complained of, heard, and determined, within the compass of one and the same day, unless the fair continues longer. *Id.*

The trial is by merchants and traders in the fair; and the judgment against the defendant is, that he shall be amerced. *Wood. b. 4. c. 1.*

From this court a writ of error lies, in the nature of an appeal, to the courts of *Westminster*. 3 *Black.* 32.

But this court is now gone much out of use.

**PIGEONS**. A lord of a manor may build a dove-coat on his own lands, parcel of the manor; but a tenant cannot, without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Every

Every person who shall shoot at or kill any pigeon, shall be imprisoned three months, unless he pay to the poor 20s. for every pigeon. 1 *Ja. c. 27. s. 2.* 2 *G. 3. c. 29.*

But if the pigeons come upon my ground, and I kill them, the owner hath no remedy against me, though I may be liable to the statutes which make it penal to destroy them. *Cro. Ja. 492.*

Pigeons in a dove house shall go to the heir, and not to the executor. 1 *Inst. 8.*

**PILLORY**, (in Latin *collistrigium*, from the person's neck being put between two boards,) is a very ancient punishment in this kingdom, and was used heretofore by the Saxons. 3 *Inst. 192.*

The word *pill* is common to all the European languages, and signifies to spoil, plunder, or *pillage*. And *pillory*, which we have immediately from the French, *pilleurie*, hath been improperly applied to denote the mode of punishment; whereas it signifies the *offence*, as *pillour* signifies the *offender*. *Barrington on the Statutes, 30.*

Every one that hath a leet or market, ought to have a pillory; and it seems that a leet may be forfeited for the want of it. 2 *Haw. 75.*

They that have been adjudged to the pillory, are infamous, and not to be received to be jurors or witnesses. 3 *Inst. 219.*

**PIRACY**. Formerly piracy was only cognizable by the admiralty courts, which proceed by the rules of the civil law. But it being inconsistent with the liberties of the subject, that any man's life should be taken away, unless by the judgment of his peers, or the common law of the land, the statute of 28 *H. 8. c. 15.* established a new jurisdiction for this purpose, which proceeds according to the course of the common law. 4 *Black. 71.*

By which statute, all treasons, felonies, robberies, murders, and confederacies, committed upon the sea, or in any haven, creek, or place where the admiral hath jurisdiction, shall be tried in such shires or places, as the king shall appoint by his commission, in like form as if such offence had been committed upon the land, and according to the course of the common law. And the offenders shall suffer death, without benefit of clergy.



By the 11 & 12 *W. c. 7.* the said offences may be tried by like commission in any of his majesty's colonies, forts, or factories abroad, at any place at sea, or upon the land; and they may hear and determine, and award execution, according to the civil law, and the method and rules of the admiralty.

The offence of piracy properly consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there; but by statute, some other offences are made piracy also.

As, by the said act of 11 & 12 *W. c. 7.* if any of his majesty's subjects shall commit any act of hostility against any other of his majesty's subjects upon the sea, under colour of a commission from any foreign power, he shall be adjudged a pirate.

And if any master or mariner shall betray his trust, and run away with the ship, or any boat, ammunition, goods, or merchandize, or yield them up voluntarily to a pirate, or confederate with any pirate, or attempt to hinder the defence of the ship, he shall suffer death as a pirate; whether he be principal, or merely accessory, by setting forth such pirates, or abetting them before the fact, or receiving or concealing them or their goods after the fact. And by a subsequent statute these accessories are declared principals.

And a reward of 10*l.* for every ship of one hundred tons or under, and of 15*l.* for every ship of greater burthen, shall be paid by the captain or master of the ship, to the person who shall first make discovery of any combination to run away with the ship; to be paid at the port where the wages of the seamen are to be paid.

And by the same statute, 11 & 12 *W. c. 7.* commanders of ships or others, trading with pirates, or furnishing them with stores or ammunition, or corresponding with them, and persons belonging to any vessel, forcibly boarding any merchant ship, and throwing overboard or destroying any of the goods, shall be adjudged pirates: and ships fitted out to trade with pirates, and the goods therein, shall be forfeited, half to the king, and half to him who shall discover the same; to be sued for in the admiralty.

And for encouragement of the mariners, when a ship hath been defended and brought to the designed port, and any  
of

of the officers or seamen have been killed or wounded, the judge of the court of admiralty in the port of *London*, and the mayor or chief officer in the several out-ports, may, on petition of the seamen, call unto him four or more substantial merchants, not interested, and by advice with them, may levy upon the owners of the ship and goods, by process out of the said court, such sum as himself and the said merchants, by plurality of voices, shall judge reasonable, not exceeding two *per cent.* of the freight, and of the ship and goods; which shall be distributed among the officers and seamen, or the widows and children of the slain, according to the direction of such justice, mayor, or chief officer. And persons maimed in such service, shall also be intitled to be admitted into Greenwich hospital. 8 G. c. 24.

And masters or seamen, not defending the ship (if it carries guns or arms) against pirates, or who shall utter any discouraging words, shall, if the ship be taken, forfeit their wages to the owners, and suffer six months imprisonment. *Id.*

PISCARY, is a right or liberty of fishing in the water of another; of which there are three kinds; *free fishery, separate fishery, and common of fishery.* See FISHERY.

PLAGUE. By statute 9 An. c. 2. and 26 G. 2. c. 6. all vessels, persons, and goods, coming from any place from whence the king, with advice of his council, shall judge it probable that the infection may be brought, shall make their quarantine in such places, and for such time as his majesty shall direct.

And the justices of the peace shall appoint watchmen, who shall not permit any person to come on shore or go on board, except persons licensed by those who have the charge of seeing the quarantine duly performed.

And if any superintendant of the quarantine or watchman shall neglect his duty, he shall be guilty of felony without benefit of clergy.

And if the master of a ship, having on board any person infected, shall conceal the same, he shall incur the like penalty.

And if any officer of the customs, or other officer, shall neglect his duty, he shall forfeit his office, and also 100 £.

If the commander of the ship shall go, or permit any other to go on shore during the quarentine, without licence, the ship and tackle shall be forfeited, and the master shall forfeit 500 l.

And if any person shall go on board, he shall be compelled to continue during the quarentine.

And lazarets shall be appointed for receiving of persons obliged to perform quarentine, and for airing of goods; and if any person appointed to perform quarentine shall escape, or attempt to escape from thence, he shall be guilty of felony without benefit of clergy.

And if any person not infected, nor obliged to perform quarentine, shall enter such lazaret, he shall be compelled to continue during the quarentine; and if he shall escape, he shall be guilty of felony without benefit of clergy.

**PLAINT**, *querela*, is the exhibiting any action, real or personal, in writing; and the party making his plaint, is called the *plaintiff*.

This plaint is chiefly in small actions in the inferior courts, under the value of 40 s.: it is in the nature of an original writ, briefly setting forth the plaintiff's cause of action, in this manner: "*A. B.* complains against *C. D.* of "a plea of trespass, &c." If the defendant shall not appear, he must be distrained, first, by something of small value; and then, if he doth not appear, a further distress is to be taken to a greater value, and so on: if all his goods are taken upon the first distress, an attachment may be applied for to the court of king's bench. 2 *Lill. Abr.* 294.

**PLANTATIONS**, or colonies, in distant countries, are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest, or ceded by treaties. 1 *Black.* 107.

With respect to their interior policy, they are properly of three sorts: 1. Provincial establishments, the constitutions of which depend on the respective commissions issued by the crown to the governors, and the instructions which usually accompany those commissions; under the authority of which, provincial assemblies are constituted, with power of making  
local

local ordinances, not repugnant to the laws of the mother country. 2. Proprietary governments, granted out by the crown to individuals, in the nature of feudatory principalities, with all the inferior regalities, and subordinate powers of legislation, which formerly belonged to the owners of counties palatine, yet so that nothing be attempted which may derogate from the sovereignty of the mother country. 3. Charter governments, in the nature of civil corporations, with the power of making by-laws for their own interior regulation, and with such special authorities as are given them in their charters of incorporation. 1 *Black.* 108.

**PLATE.** To prevent frauds in the true manufacturing of plate, assayers shall be appointed for the assaying and marking of plate, to which all working gold or silver smiths shall send all plate made by them to be touched or assayed.

And, by 32 G. 2. c. 24. every person who shall trade in, or sell any gold or silver plate, or goods in which gold or silver is manufactured, shall take out a licence annually from the officers of excise.

**PLAYERS** acting for hire where they have no settlement nor licence from the lord chamberlain, shall be deemed rogues and vagabonds, and punished as such; or, otherwise, every such player shall forfeit 50*l.*, in which case he shall not suffer as a vagrant. 10 G. 2. c. 28.

But by the 28 G. 3. c. 28. justices of the peace in sessions may license playhouses for a certain time, and under certain restrictions.

**PLEA**, *placitum*, is that which either party alleges for himself in court, in a cause there depending to be tried: and *pleading*, in a large sense, contains all the matters which come after the declaration, as well on the defendant's as on the plaintiff's side, till issue is joined; but it is commonly taken for the defendant's answer to the plaintiff's declaration.

Pleas are divided into *common pleas*, and *pleas of the crown*: *common* pleas are those which are agitated between *common* persons in *civil* cases, and not between the king and the party: *pleas of the crown* are all suits in the king's name for *criminal* offences against his *crown* and dignity; as treasons, felonies, batteries, and such like.



*Common pleas* are either *dilatory*, or *pleas to the action*. *Pleas dilatory* are such as tend merely to delay, or put off the suit, by questioning the propriety of the remedy, rather than by denying the injury: *pleas to the action* are such as dispute the very cause of suit. 3 *Black.* 301.

*Dilatory pleas* are, 1. To the *jurisdiction of the court*; alleging, for instance, that it ought not to hold plea of this injury, because it arose beyond sea; or, because the land in question is of ancient demesne, and ought only to be demanded in the lord's court. 2. To the *disability of the plaintiff*; by reason whereof he is incapable to commence or continue the suit; as, that he is an infant, an alien enemy, outlawed, or excommunicate. 3. In *abatement*; which abatement is either of the writ or the declaration, for some defect in one of them; as by mistaking the defendant, or giving him a wrong addition, or other want of form in any material respect. *Id.*

These pleas to the jurisdiction to the disability, or in abatement, were formerly very often used as merely dilatory, without any foundation of truth, and calculated only for delay; but now, by the statute 4 & 5 *An. c.* 16. no dilatory plea shall be admitted without affidavit made of the truth thereof, or some probable matter shewn to the court to induce them to believe it true. *Id.* 302.

Pleas to the *jurisdiction*, conclude to the cognizance of the court, praying "judgment whether the court will have "further cognizance of the suit:" pleas to the *disability*, conclude to the person, by praying "judgment if the plaintiff ought to be answered:" pleas in *abatement*, when the suit is by *original*, conclude to the writ or declaration, by praying "judgment of the writ or declaration, and that the same may be quashed;" but if the action be by *bill*, the plea must pray "judgment of the bill," and not of the declaration, the bill being here the original, and the declaration only a copy of the bill. *Id.* 303.

When these dilatory pleas are allowed, the cause is either dismissed from that jurisdiction, or the plaintiff is stayed till his disability be removed; or he is obliged to sue out a new writ by leave obtained from the court, or to amend and new frame his declaration. But when, on the other hand, they are over-ruled, as frivolous, the defendant hath judgment to answer over to the action. *Id.*

*Plea to the action*, is to answer to the *merits* of the complaint; and is either *general* or *special*. The *general* plea, or  
*general*

*general issue*, is what traverses, thwarts, and denies at once the whole declaration, without offering any special matter whereby to evade it. As, in trespass either by force of arms, or on the case, *not guilty*; in debt upon contract, *he owes nothing*; in debt on bond, *it is not his deed*; on a promise, *he made no such promise*: these pleas are called the *general issue*; because, by importing an absolute and general denial of what is alleged in the declaration, they amount at once to an issue, by which is meant a fact affirmed on one side, and denied on the other. *Id.* 305.

Formerly, the general issue was seldom pleaded, except when the party intended wholly to deny the charge alleged against him. But when he meant to distinguish away or palliate the charge, it was always usual to set forth the particular facts in what is called a *special plea*; which was originally intended to apprise the court and the adverse party of the nature and circumstances of the defence, and to keep the law and the fact distinct. And it is an invariable rule, that every defence which cannot be thus specially pleaded, may be given in evidence, upon the general issue at the trial. But the science of special pleading having been frequently perverted to purposes of chicane and delay, the courts have of late, in some instances, and the legislature in many more, permitted the general issue to be pleaded, which leaves every thing open, the fact, the law, and the equity of the case; and have allowed special matter to be given in evidence at the trial. *Id.*

*Special pleas*, in bar of the plaintiff's demand, are very various, according to the circumstances of the defendant's case; as in real actions, a general release, or a fine, both of which may destroy the plaintiff's title: or in personal actions, an accord, arbitration, conditions performed, non-age of the defendant, or some other fact which precludes the plaintiff from his action. A justification is likewise a special plea in bar; as in an action of assault and battery, that it was the plaintiff's own original assault; in trespass, that the defendant did the thing complained of in right of some office which warranted him so to do; or, in an action of slander, that the plaintiff is really as bad a man as the defendant said he was. Also, a man may plead in bar the statutes of limitation; as upon a promise to pay money to the plaintiff, the defendant may plead that he made no such promise within six years. *Id.* 306.

The conditions and qualities of a plea are, 1. That it be single, and contain only one matter. 2. That it be direct and positive, and not argumentative. 3. That it have convenient certainty of time, place, and persons. 4. That it answer the plaintiff's allegations in every material point. 5. That it be so pleaded as to be capable of trial. But by statute 4 & 5 *An. c.* 16. a man, with leave of the court, may plead two or more distinct matters; as in an action of assault and battery, he may plead not guilty, that the other struck first, and the statute of limitation. *Id.* 308.

When the plea of the defendant is thus put in, if it doth not amount to an issue or total contradiction of the declaration, but only evades it, the plaintiff may *reply* to the defendant's plea, either traversing it, or alleging new matter in contradiction to it. To which replication the defendant may *rejoin*, or put in an answer called a *rejoinder*. The plaintiff may answer the rejoinder by a *surrejoinder*. Upon which the defendant may *rebut*; and the plaintiff answer him by a *surrebutter*. But it is seldom that the matter goes so far. Which said pleas, replications, rejoinders, surrejoinders, rebutters, and surrebutters, answer to the *exceptio, replicatio, duplicatio, triplicatio, and quadruplicatio*, of the Roman law. *Id.* 309.

In criminal matters, the plea is of five kinds: 1. To the *jurisdiction of the court*; which is, where an indictment is taken before a court that hath no cognizance of the offence; as if a man be indicted for a rape at the sheriff's tourn, or for treason at the quarter sessions. 2. *Demurrer*; which is, when the fact, as alleged, is allowed to be true; but the prisoner joins issue upon some point of law in the indictment, by which he insists, that the fact, as stated, is no felony, treason, or whatever the crime is alleged to be: as if a man be indicted for feloniously stealing a greyhound, which is not felony, but only a civil trespass. But this demurrer is seldom used; because the same advantage may be taken upon the plea of not guilty; or afterwards, in arrest of judgment, when the verdict hath established the fact. 3. In *abatement*; which is principally for misnaming the prisoner, or giving him a wrong addition: but this kind of plea is of little advantage; for if the exception be allowed, a new bill of indictment may be framed according to what the prisoner in his plea avers to be his true name and addition. 4. A *special plea in bar*; of which there are four kinds: First, a for-

a former acquittal, (*auterfoits acquit*,) founded on this principle, that no man shall be brought in jeopardy of his life more than once for the same offence. Secondly, a former conviction (*auterfoits convict*) for the same offence, though no judgment was given, or perhaps will be given, (being suspended by the benefit of clergy, or other cause); and this depends on the same principle as the former, that no man ought to be twice brought in danger of his life for one and the same crime. Thirdly, a former attainder, (*auterfoits attain*,) which is a good plea in bar, whether it be for the same or any other felony; for having, by the attainder, forfeited all he had, he is dead in law; and it would be absurd to attain him a second time; but it is otherwise if the attainder hath been reversed for error, or the judgment hath been vacated by the king's pardon, with regard to felonies committed afterwards. Fourthly, a *pardon* of the offence charged in the indictment may be pleaded in bar; which at once destroys the end and purpose of the prosecution, by remitting the punishment which the prosecution was calculated to inflict. Fifthly, the *general issue*, or plea of *not guilty*; upon which plea alone the prisoner can receive his final judgment of death. In case of an indictment of felony or treason, there can be no special justification by way of plea; as on an indictment of murder, a man cannot plead that it was in his own defence against a robber on the highway, or a housebreaker; but he must plead the general issue *not guilty*, and give this special matter in evidence; and the jury, upon the evidence, will take notice of any defensive matter, and give their verdict accordingly, as effectually as if it were, or could be, specially pleaded. 4 *Black.* 332.

PLEDGE is of two kinds; living and dead. *Living* pledge is, when a man borrows a sum of money of another, and grants him an estate, to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void, as soon as such sum is raised. And in this case, the land or pledge is said to be *living*: it subsists and survives the debt; and immediately, on the discharge of it, results back to the borrower. A *dead* pledge, or *mortgage*, is where a man borrows of another a specific sum, and grants him an estate in fee, on condition that if he, the mortgagor, shall repay to the mortgagee the said sum on a certain day conditioned in the deed, that then the mortgagee



gagee may re-enter on the estate so granted in pledge, or that the mortgagee shall re-convey the estate to the mortgagor; and in this case the land, which is so put in pledge, is by law, in case of non-payment at the time limited, dead and gone. 2 *Black.* 157.

If a pawnbroker receives plate or jewels as a pledge or security for the repayment of money lent thereon at a day certain, he has them on an express contract or condition to restore them, if the pledger performs his part by redeeming them in due time; for the due execution of which contract, many useful regulations are made by the statute 30 *G. 2. c. 24.* 2 *Black.* 452.

And so if a landlord distrains goods for rent, or a parish officer for taxes, these, for a time, are only a pledge in the hands of the distrainers; and they are bound by an implied contract in law, to restore them on payment of the debt, duty, and expences, before the time of sale; or, when sold, to render back the overplus. *Id.*

**PLENARTY**, in the ecclesiastical law, is where a church is full of an incumbent. At the common law, if a stranger who had no right to the presentation had presented a clerk upon a vacancy, and the clerk had been admitted and instituted thereupon, the true patron had no other remedy to recover his advowson, but a writ of right of advowson, wherein the incumbent was not to be removed; for plenarty, generally, was a good plea both in *quare impedit*, and a *darrein presentment*; and the reason was, to the intent that the incumbent might quietly intend and apply himself to his spiritual charge. But by statute 7 *An. c. 18.* no usurpation upon any avoidance shall displace the estate or interest of any person intitled to an advowson, or hinder him to present on the next avoidance, or to maintain a *quare impedit* to gain the possession.

**PLOUGH-BOTE**, is an allowance to the tenant of wood sufficient for ploughs, harrows, carts, and other instruments of husbandry.

**PLOUGH-LAND**, is as much land as can reasonably be cultivated in a year with one plough. By the statutes relating to the repair of the highways, it hath usually been estimated at 50*l. per annum.*

**PLURA-**

**PLURALITY.** By the statute 21 H. 8.] c. 13. if any person, having one benefice with cure of souls of 8 l. a year in the king's books, shall accept another of whatsoever value, and be instituted and inducted into the same, the former benefice shall be void; unless he have a dispensation from the archbishop of *Canterbury*, who hath power to grant dispensations to chaplains of noblemen and others, under proper qualifications, to hold two livings, provided that the livings be not more than thirty miles distant from each other, and provided that he reside in each for a reasonable time in every year, and that he keep a sufficient curate in that wherein he doth not ordinarily reside.

Though the act mentions *instituted and inducted*, yet, when he is instituted into the second benefice, the dispensation to hold two benefices comes too late, although he be afterwards inducted; for, by institution, the church is full of the incumbent. 4 Co. 79.

But with respect to *lapse*, the avoidance of the former benefice doth not take place, till induction to the second; so that the parson hath six months from the induction to present in, to save the incurring of a lapse; yet he may, if he pleases, present before the induction. *Bur. Mansf.* 1512.

But a man may hold as many benefices *without cure* as he can get; all of them, or all but the last, being under the value of 8 l. a year. *Watf. c. 3.*

**PLURIES**, is a writ that issues in the third place, after two former writs have been disobeyed; for first, goes out the original writ, or *capias*; which, if it has not effect, then issues the *alias*; and if that also fails, then the *pluries*: "We command you, as we have often commanded you," —*sicut pluries precipimus*. It is used in proceedings to outlawry, and in great diversity of cases.

**POISONING**, is the most detestable of all kinds of murder; because it is most horrible and fearful to the nature of man, and of all others can be least prevented, either by resistance or foresight. By the statute 22 H. 8. c. 9. was inflicted for this crime a more grievous and lingering death than the common law prescribed; namely, that the offender should be boiled to death; but this was repealed by 1 Ed. 6. c. 12.

If a man persuade another to drink a poisonous liquor, under the notion of a medicine, who afterwards drinks it in his absence, the procuror of the felony, in this case, is as much a principal, as if he had been actually present when it was done; so are all those who were present when the poison was infused, and privy and consenting to the design. But those who only abetted the crime by their command, counsel, or advice, but were absent when the poison was infused, are accessaries, and not principals. 2 *Haw.* 313.

**POLICY OF INSURANCE**, is an instrument entered into by insurers of ships and merchandize to merchants, obligatory for the payment of a sum agreed on in case of loss. It is a course taken by those who adventure goods to sea, that they, unwilling to hazard the whole, give unto some other, called an insurer, a certain rate or proportionable sum of so much *per cent.*, to secure the safe arrival of the ship and goods at the place agreed on; so that if the ship and merchandize miscarry, the insurer makes good to the adventurer so much as he promised to secure; but if the ship arrive safely, he gains that clear which the merchant compounds to pay him. See **INSURANCE**.

**POLL**, a head; so where particular jurors are challenged, it is called a challenge to the *polls*; so *poll money*, *poll silver*, sometimes called a capitation tax, is a tax upon the people at so much a head. *Pollard* trees, are such whose heads have been cut off. A *deed-poll*, is a deed not indented at the top, but is polled or shaved quite even.

**POLYGAMY**, in strictness, differs from *bigamy*; *polygamy* being where a man hath several wives at the same time; *bigamy* where he hath had two wives successively. By statute 1 *J. c.* 11. if any person within his majesty's dominions of *England* and *Wales*, being married, shall marry any person, the former husband or wife being alive, such offence shall be felony (but within clergy). But this shall not extend (1.) to any person whose husband or wife shall be continually remaining beyond the seas, by the space of seven years together, and this, although the party in *England* hath notice, that such husband or wife is living: nor (2.) to any person whose husband or wife shall absent him  
or

or herself, the one from the other for seven years together, in any part of his majesty's dominions, the one of them not knowing the other to be living within that time: nor (3.) to any person who shall be at the time of such marriage divorced by sentence in the ecclesiastical court: nor (4.) to any person whose former marriage by sentence in the ecclesiastical court, hath been declared to be void: nor (5.) to any person by reason of any former marriage made within age of consent; that is, either the woman being under twelve, or the man under fourteen.

If the first marriage was beyond sea, and the latter in *England*, the party may be indicted here, because the latter marriage makes the offence; but if the first marriage was in *England*, and the latter beyond sea, the offender cannot be indicted here, because the offence was not within the kingdom. *Kely.* 79.

On a prosecution on this statute, the first and true wife cannot be allowed as a witness against the husband; but the second wife may be admitted to prove the second marriage, for she is not his wife so much as *de facto*. 1 *Hale's Hist.* 693.

PONE, is a writ whereby a cause depending in the county court, or other inferior court, is removed into the court of common pleas, and sometimes into the king's bench; as when a replevin is depending by writ out of chancery, the plaintiff or defendant may remove the plea by *pone*, requiring the sheriff to *put* the plaint, which is in his county court, before the king's justices at Westminster. *Wood. b. 4. c. 4.*

Also a writ commanding the sheriff (on the plaintiff's putting in sureties to prosecute, which is a thing merely supposed) to summon the defendant to appear, and to answer to the plaintiff's suit, is likewise called a *pone*. *Id.*

PONTAGE, *pontagium*, is a contribution towards the maintenance or rebuilding of bridges. And it also signifies toll taken for that purpose. This was one of the three public charges from which no one was exempt; viz. castles, bridges, and expeditions. Unto which even the religious societies were subject.

POPERY. Amongst many other forfeitures and disabilities, it was enacted by the statute 10 & 11 *W. c. 4.* that



if any popish priest shall say mass, or exercise any part of his office or function, (except in foreign ministers houses,) or if any papist shall keep school, or take upon him the education, or government, or boarding of youth, he shall be adjudged to perpetual imprisonment: and if any papist shall not, within six months after he shall be eighteen years of age, take the oaths to the government, he shall be incapable to take any lands by descent, devise, or limitation; also, every papist shall be disabled to purchase any lands in his own name, or in the name of any other to his use. But by the 18 G. 3. c. 66. all this is repealed, with respect to such persons as shall within six months after the accruing of his title, being of the age of twenty-one years, take an oath in the nature of the present oath of allegiance and supremacy.

**POPULAR ACTION**, is an action given in general to any of the king's *people*, who will sue for a penalty on the breach of some penal statute. See **INFORMATION**.

**PORTION**. Where a portion is charged upon land, by deed or by will, if the person dies before it becomes due, it shall sink into the inheritance for the benefit of the heir at law, whether it be given with or without interest. 1 *Atk.* 555.

A portion given to one payable at a certain age, and if he dies, limited over to another, without mentioning any age; if the first dies before the time of payment, it vests in the second immediately. *Id.* 556.

If a younger brother hath a provision under a settlement, and lives with the elder, whose estate is charged with the portion, he shall have an allowance for his maintenance out of the interest. For where there is a power of charging interest, it shall be considered as maintenance; for giving interest is the same thing as giving express maintenance. *Id.*

**PORT-REEVE**, *portgrave*, is the chief magistrate of a port town; as *sheriff* (*shire-reeve*) is the chief officer of the shire.

**PORT TOLL**, is a payment for the liberty of bringing goods into a port; and for this the owner of the port may prescribe, without any consideration alleged; for the privilege

lege of bringing goods into a port for safety, implies a consideration in itself.

**POSSE COMITATUS.** For keeping the peace, and pursuing felons, the sheriff may command all the people of his county to attend him, which is called the *posse comitatus* : which summons, every person above the age of fifteen, and under the degree of a peer, is bound to attend, on pain of fine and imprisonment. 1 *Black.* 343.

**POSSESSION,** obtained by a mere stranger, without right, is a title, until the true owner enters upon him; which, in such case, the true owner may do, without the formalities of law. But if a descent hath been cast, this *prima facie* operates as a title in him who comes in by descent; and he shall not be ousted by the true owner without process of law, and proving in himself a superior title. 3 *Black.* 176.

Possession is the lowest degree of title, which may be without any apparent right, or pretence of right; as where one man invades the possession of another, and, by force or surprise, turns him out of the occupation of his lands, which is usually called a disseisin. Or it may happen, when, after the death of the ancestor, and before the entry of the heir, or after the death of a particular tenant, and before the entry of him in remainder or reversion, a stranger gets possession of the vacant land, and holds out him that had a right to enter; in such cases, the wrong doer hath only a mere naked possession, which the rightful owner may put an end to by a variety of legal remedies. But in the mean time, till some act be done by the rightful owner, to divest this possession, and assert his title, such actual possession is *prima facie* evidence of a legal title in the possessor; and it may, by length of time, and negligence of him who hath the right, by degrees, ripen into a perfect and indefeasible title. 2 *Black.* 196.

The next step towards a good title, is the *right* of possession; for this may reside in one man, while the actual possession is not in himself, but in another. For if a man be disseised, or otherwise kept out of possession, although the actual possession be lost, yet he hath still remaining in him the *right* of possession, and may exert it whenever he thinks proper, by entering upon the disseisor, and turning him out of that occupancy which he hath so illegally gained. But  
this

this right of possession is of two sorts; an *apparent* right of possession, which may be defeated by proving a better; and an *actual* right of possession, which will stand the test against all opponents. Thus, if the disseisor, or other wrong doer, dies possessed of the land whereof he so became seised by his own unlawful act, and the same descends to his heir, now by the common law, the heir hath obtained an *apparent* right, though the actual right of possession resides in the person disseised; and it shall not be lawful for the person disseised to divest this apparent right by mere entry, or other act of his own, but only by an action at law: for until the contrary be proved by legal demonstration, the law will rather presume the right to reside in the heir, whose ancestor died seised, than in one who has no such presumptive evidence to urge in his own behalf. But if he, who has the actual right of possession, puts in his claim, and brings his action within a reasonable time, and can prove by what unlawful means the ancestor became seised, he will then, by sentence of law, recover that possession to which he hath such actual right. Yet if he omits to bring his possessory action within a competent time, his adversary may imperceptibly gain an actual *right* of possession, in consequence of the other's negligence; and in such case, he will have nothing left in him but the mere right of *property*, without either *possession*, or even a right of possession. Thus if a disseisor turns me out of possession of my lands, he thereby gains a *mere naked possession*, and I still retain the *right of possession*, and *right of property*. If the disseisor dies, and the lands descend to his son, the son gains an *apparent* right of possession; but I still retain the *actual* right both of possession and property. If I acquiesce for thirty years, without bringing any action to recover possession of the lands, the son gains the actual *right of possession*, and I retain nothing but the mere *right of property*: and even this right of property will fail, unless I pursue it within the space of sixty years. 2 *Black.* 196.

#### POST:

1. By the several acts of parliament relating to the post office, there shall be one general post office in *London*, and one postmaster general. And none but persons authorized by him, shall carry letters; except letters carried by carriers or shipmasters with goods, instruments out of any court, letters sent by friends in their journey, or by a special messenger;

finger; and except the two universities; to and from which letters and other things may be sent in manner as heretofore hath been used.

2. The rates for carriage of letters shall be as follows:

For every single letter, not exceeding one whole post stage from the office where the letter is put in, 2*d.*; double letter, 4*d.*; treble, 6*d.*; an ounce, 8*d.*; and so in proportion.

Above one post stage, and not exceeding two; a single letter, 3*d.*; double, 6*d.*; treble, 9*d.*; an ounce, 1*s.*

Above two post stages, and not exceeding eighty miles from *London*; a single letter, 4*d.*; double, 8*d.*; treble, 1*s.*; an ounce, 1*s.* 4*d.*

Above eighty miles, and not exceeding one hundred and fifty miles; a single letter, 5*d.*; double, 10*d.*; treble, 1*s.* 3*d.*; an ounce, 1*s.* 8*d.*

Above one hundred and fifty miles; single, 6*d.*; double, 1*s.*; treble, 1*s.* 6*d.*; an ounce, 2*s.*; and so in proportion.

But no letter under an ounce, shall be rated higher than as a treble letter; and if one ounce, to be rated as four single letters, and so in proportion above an ounce; every quarter of an ounce to be rated as a single letter.

3. Within the limits of the penny post in *London*, shall be paid, 1*d.* at putting in, and 1*d.* at delivery.

4. No letters shall be exempted from postage;

Except letters from or to the king:

And such, not exceeding the weight of two ounces, as shall be sent during the sitting of parliament, or within forty days before or after any summons or prorogation, and whereon the whole superscription shall be of the hand-writing of the member directing the same, and shall have his name indorsed thereon, together with the name of the post town, from which it is intended to be sent; and the day, month, and year, when put into the office, (the day of the month to be in words at length,) and shall be put into the office on the day of the date put upon such letter.

Or such as shall be directed to any member of either house of parliament, at the place where he shall actually be at the time of the delivery thereof, or at his usual place of residence in *London*, or at the house of parliament, of which he is a member.

Or to the officers of the treasury, admiralty, war office, general post office, secretaries of state, paymaster general of



the forces, clerk of the parliaments, clerk of the house of commons, or upon his majesty's service (indorsed by the proper officer).

Also this shall not extend to printed votes or proceedings in parliament, or printed newspapers, sent without covers, or in covers open at the sides, signed on the outside by any member of parliament, or directed to a member at any place whereof he shall have given notice to the postmaster general.

Also clerks in the offices of the secretaries of state and post office, being thereunto licensed by the secretaries or postmaster general respectively, may continue to frank votes and newspapers as heretofore hath been used; provided the same be sent without covers, or in covers open at the sides.

5. If any person shall counterfeit the handwriting of any person in the superscription, or shall alter the date put thereon, or knowingly write or send any letter, the cover whereof shall have been forged, counterfeited, or altered, he shall be guilty of felony, and transported for seven years.

6. If any post boy shall quit the mail before his arrival at the next stage, or shall suffer any other person (except the person employed to guard the mail) to ride on the horse or carriage; or shall loiter on the road, or shall not, in all possible cases, convey the mail after the rate of six miles an hour, at least, he shall be sent to the house of correction.

7. If any post boy shall, by himself, or in combination with others, unlawfully collect any letters, or convey, or cause them to be conveyed, he shall forfeit, for every letter, 10s. or be committed to the house of correction.

8. If any person employed in any business in the post office, who shall take any letter or packet to be forwarded by the post, and receive any money therewith for the postage, shall burn or destroy any such letter or packet, or shall advance the rate of postage upon any letter or packet, and not duly account for the money by him received for such advanced postage, he shall be guilty of felony.

9. No person shall open, detain, or delay any letter or packet, after the same shall be delivered into the post office; except by warrant from a secretary of state, or where the party shall refuse to pay for the same, or where they are re-  
turned

turned for want of true directions, and the party cannot be found, on pain of 20*l.* and being disabled from having any employment in the post office; and every postmaster, before he enters upon his office, shall make oath before a justice of the peace to the like purpose.

And in all post towns, the postmaster is bound to deliver letters at the houses of the inhabitants, on paying the legal postage only. *Burr. Mansf.* 2153.

10. All sums, not exceeding 5*l.*, that shall be due from any person for letters, or which shall be received for the carriage of letters, without answering the same to the receiver general, shall be recovered before justices of the peace, in the same manner as small tithes; and such debt shall be preferable in payment, before any debt to any private person.

11. If any person employed in the post office, shall secrete, embezzle, or destroy any letter or packet, containing any bank note, bill of exchange, or other writing, for payment of money, he shall be guilty of felony, without benefit of clergy.

12. The postmasters, and no other person, (except the owners of chaises duly licensed,) shall provide horses and furniture to let to hire, to persons riding post; and they may charge 3*d.* a mile for each horse riding post, and 4*d.* a mile for the person riding as guide, and shall not charge for any bundle or parcel of goods, not exceeding eighty pounds weight, to be laid on the horse rode by the guide. But if the postmaster doth not, or cannot furnish persons riding stop with horses, in half an hour after demand, such persons may furnish themselves elsewhere, provided that they take no horses without the owner's consent.

13. And by the 25 G. 3. c. 51. every postmaster, innkeeper, or other person, who shall let any horse, or carriage, to travel post, or for hire, shall take out a licence annually from the commissioners of the stamp duties.

And also a duty is to be paid for all horses travelling post, hired by the mile, stage, or by the day; and on public stage coaches and diligences, hackney coaches excepted. And by the 27 G. 3. c. 26. the said duties may be let to farm.

14. And by the 25 G. 3. c. 57. all carriages or horses employed in carrying the mail, shall be exempted from tolls at every turnpike-gate.

15. No postmaster shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to serve in parliament, on pain of 100*l.* and of being incapacitated.

POSTEA, is the return of the judge, before whom a cause was tried, of what was done in the cause *after* the joining issue, and awarding the trial, and is indorsed on the back of the *nisi prius* record. The substance of which is, that *postea* (*afterwards*) the said plaintiff and defendant appeared by their attorneys in the place of trial; and a jury, being sworn, found such a verdict; or that the plaintiff, after the jury sworn, made default, and did not prosecute his suit, or as the case shall be. It is usually delivered by the clerk of assize to the attorney in the cause, who is to deliver the same into the office, that judgment may be entered according thereto by the officer of the court. It is brought into court at the day in bank, and recorded there, and delivered back to the attorney, who gives a rule for judgment upon it; and if there be no rule to the contrary, after the rule for judgment is out, the attorney brings his *postea* to the secondary, who signs the judgment, and then he enters all this matter upon the issue roll. 2 *Lill.* 337.

POSTERIORITY signifies the being or coming *after*, and is a word of comparison and relation in tenures, the correlative whereof is *priority*. As a man holding lands of two lords, holds of his ancients lord by *priority*, and of his latter lord by *posteriority*. 2 *Inst.* 392.

POST-FINE, is a duty to the king, for a fine acknowledged in his court, paid by the cognizee after the fine is fully passed. It is called a *post-fine*, because there was a former or *primer* fine paid on suing out the writ. This post-fine is as much as the primer fine, and half as much more, or ten shillings for every five marks of land; that is, three twentieth parts of the supposed annual value. 2 *Black.* 350.

POSTHUMOUS, is where a child is born after his father's death. By statute 10 & 11 *W. c.* 16. where it often happens, that by marriage, and other settlements,  
estates

estates are limited in remainder, to the use of the sons and daughters, the issue of such marriage, with remainders over, without limiting an estate to trustees, to preserve the contingent remainders limited to such sons and daughters, who, if they happen to be born after the decease of their father, are in danger to be defeated of their remainder, by the next in remainder after them; it is therefore enacted, that such sons and daughters, that shall be born after the decease of their father, may take such estates, so limited to the first and other sons, or to the daughter or daughters, as if born in the life-time of their father, although there shall happen to be no estate limited to trustees, after the decease of the father, to preserve the contingent remainder to such after-born children, until they shall come *in esse*, or be born.

A posthumous child, either of the whole, or half blood, shall take under the statute of distribution. 1 *Verz.* 156.

**POUND**, *parcus*, is generally any place inclosed to keep in beasts; but especially a place of strength, to keep cattle that are distrained, or put in for any trespass done by them, until they are replevied or redeemed.

And it is either a pound *overt* or pound *covert*. A pound *overt*, is an open pound, usually built in the lord's waste, and which he provides for the use of himself and his tenants; and it is also called the lord's or common pound; also a backside, yard, or other place, whereto the owner of the beasts impounded may come to give them meat, without trespass, is a pound *overt*. A pound *covert* is a close place, where the owner of the cattle cannot come for the purpose aforesaid, without trespass. *T. L.*

There is difference between a *common* pound, an *open* pound, and a *close* pound, as to cattle impounded; for where cattle are kept in a common pound, no notice is necessary to the owner to feed them; but if they are put into any other open place, it is otherwise, for notice is to be given.

A common pound belongs to a township, lordship, or village, and there ought to be such a pound in every township, kept in repair by those who have used to do it time out of mind; the oversight whereof is to be by the constable or steward of the leet.

If the owner be guilty of pound-breach, and takes away his goods, the party distraining may have his action, and also



may take the goods that were distrained wherever he finds them, and impound them again. 1 *Inst.* 47.

If distress be taken of goods without cause, the owner may make rescous; but if they be distrained without cause, and impounded, the owner may not break the pound and take them out, because they are then in custody of the law. *Id.*

**POUND-BREACH.** By the common law, if a man break the pound, or the lock of it, or part of it, he shall be punished as for a breach of the peace; and the party who distrained may take the goods again, wheresoever he finds them, and impound them again.

And by statute 2 *W. c.* 5, on any pound-breach, or rescous of goods distrained for rent, the party grieved, on a special action on the case, shall recover treble damages and costs.

Also for pound-breach, the offender may be punished in the court leet. 1 *Inst.* 47.

**POWER,** is an authority which one man gives another to act for him; and is sometimes a reservation, which a person makes in a conveyance for himself, to do some acts; as to make leases, or the like, 2 *Lill. Abr.* 339.

The limitation and modifying of estates, by virtue of powers, came from equity into the common law, with the statute of uses. *Burr. Mansf.* 120.

In conveyances to an use, a man may direct and model that use as he pleases, and the statute 27 *H. 8. c.* 10. executes the possession to the use; therefore he may annex powers to estates, which cannot be annexed to them by a conveyance at the common law. 1 *Inst.* 237.

To make leases, is of all kinds of powers the most frequent. *Burr. Mansf.* 120.

The plan of this power to make leases is for the mutual advantage of possessor and successor. *Id.* 121.

The successor therefore must not be prejudiced in point of remedy, or any other circumstance of full and ample enjoyment. *Id.*

The two usual methods of leasing are, either at the best rent, or upon fines; and the conditions in favour of the successor, must be pursued not only literally, but substantially. *Id.* 122.

If the ancient rent is to be reserved, it must be reserved with all the beneficial circumstances, that the remainder man may be under no difficulty in receiving the rent. *Id.*

POYNINGS' LAW, was a law made in *Ireland* in the reign of king *Hen. 7.* when Sir *Edward Poynings* was lord deputy there, that all acts of parliament before that time, made in *England*, should be of force within the realm of *Ireland.* 1 *Black.* 103.

PRÆCIPE, is a writ commanding the defendant to do the thing required, or to shew cause why he hath not done it. The use of this writ is, where something certain is demanded by the plaintiff, which is in the power of the defendant to perform; as before the possession of land, to pay a certain liquidated debt, to perform a specific covenant, to render an account, and the like; in all which cases, the writ is drawn up in the form of a *præcipe* or command, to do thus, or shew cause to the contrary; giving the defendant his choice, to redress the injury, or stand suit. 2 *Black.* 274.

*Tenant to the præcipe*, is he against whom the writ of *præcipe* is brought, in suing out a common recovery, and must be seised, or tenant of the freehold of the lands of which the recovery is to be suffered.

PRÆDIAL TITHES, are such as arise merely and immediately from the ground; as grain of all sorts, hay, wood, fruits, herbs; for a piece of land or ground being called in Latin *pradium*, (whether it be arable, meadow, or pasture,) the fruit or produce thereof is called *prædial*; and consequently, the tithe, payable for such annual produce, is called a *prædial tithe*.

PRÆMONSTRATENSES, were canons who lived according to the rule of *St. Austin*, as reformed by *St. Norbert*, who set up this regulation about the year 1120 at *Præmonstratum* in *Picardy*; a place so called because it was said to be foreshewn, or *premonstrated*, by the Blessed Virgin, to be the head seat or mother church of this order. They were brought into *England* soon after the year 1140, and had about thirty-five houses in this kingdom before the dissolution.

**PRÆMUNIRE**, is so called from a word in the writ respecting the principal matter, *præmunire facias præfatum A. B. quod tunc sit coram nobis, &c.* where *præmunire* is used for *præmonere*, to warn the person to appear. 1 *Inst.* 129.

By 27 *Ed. 3. c. 1.* called the statute of provisors, they which shall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or which do sue in any other court, to defeat or impeach the judgment given in the king's court, shall have a day, containing the space of two months, by warning to be made to them by the sheriff or other officer, to appear to answer in their proper persons for the contempt: and if they come not at the said day to be at the law, they shall be put out of the king's protection, their lands and goods forfeited to the king, and their bodies (wheresoever they may be found) shall be taken and imprisoned, and ransomed at the king's will. And, upon the same, a writ shall be made to take them by their bodies, and to seize their lands, goods, and possessions, into the king's hands. And if it be returned, that they be not found, they shall be put in exigent and outlawed.

And by the 16 *R. 2. c. 5.* commonly called the statute of præmunire, both they who pursue or cause to be pursued, in the court of *Rome* or elsewhere, any processes or instruments, or other things whatsoever, which touch the king, against him, his crown and regality, or his realm, and also they who shall bring, receive, or execute the same, shall be out of the king's protection; and their lands and tenements, goods and chattels, forfeited to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or process shall be made against them by *præmunire facias*, in manner as is ordained in other statutes of provisors.

And in these two statutes are contained the pains and penalties of what is called a præmunire: they were intended chiefly to oppose the papal incroachments in this realm; but the penalties thereof, by several subsequent statutes, are extended to other cases which have no principal relation to popery.

So odious was this offence formerly, that a man who was attainted of the same, might have been slain by any one without danger of law; because it was provided by law, that

that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy; and therefore, by the 5 *El. c. 1.* it is enacted, that it shall not be lawful for any one to slay any person attainted in a *præmunire*. But he is so far out of the king's protection, that he is disabled to bring an action for any injury whatsoever. And no one, knowing him guilty, can with safety give him aid, comfort, or relief. 1 *Haw. 55.*

**PREBEND**, is an endowment in land, or pension in money, given to a cathedral or conventual church in *præbendū*; that is, for the maintenance of a secular priest, or regular canon, who was a *prebendary*, as supported by the said *præbend*. Authors generally confound the two words *præbend* and *prebendary*; whereas the former signifies the office, or the stipend annexed to that office; and the latter signifies the officer, or person who executes the office, and enjoys the stipend.

**PRECEDENCE**, among the nobility, by statute 31 *H. 8. c. 10.* is thus regulated:—On the right side of the parliament-chamber, the archbishop of *Canterbury*, next to him the archbishop of *York*, next to him the bishop of *London*, next to him the bishop of *St. Asaph*, next to him the bishop of *Winchester*, and then all the other bishops according to their seniority. On the left side, on the higher part of the form, the lord chancellor, lord treasurer, lord president of the council, the lord privy seal, above all dukes, except those of the royal family. Next, the great chamberlain, the constables, the marshal, the lord admiral, the grand master or lord steward, and the king's chamberlain. Then the king's chief secretary, being of the degree of a baron; and all dukes, marquesses, earls, viscounts, and barons, after their ancestry.

The rules of precedence may be reduced to the following table:

Archbishop of <i>Canterbury</i> .	Lord high constable.
Lord chancellor.	Lord marshal.
Archbishop of <i>York</i> .	Lord admiral.
Lord treasurer.	Lord steward of the household.
Lord president of the council.	Lord chamberlain of the household.
Lord privy seal.	Dukes.
Lord great chamberlain.	Marquesses.



Marquesses.	Chief justice of the king's bench.
Duke's eldest sons.	Master of the rolls.
Earls.	Chief justice of the common pleas.
Marquesses eldest sons.	Chief baron of the exchequer.
Dukes younger sons.	Judges and barons of the coif.
Viscounts.	Knights bannerets royal.
Earl's eldest sons.	Viscounts younger sons.
Marquesses younger sons.	Barons younger sons.
Secretary of state, if a bishop.	Baronets.
Bishop of <i>London</i> .	Knights bannerets.
Bishop of <i>Durham</i> .	Knights of the bath.
Bishop of <i>Winchester</i> .	Knights bachelors.
Bishops.	Baronets eldest sons.
Secretary of state, if a baron.	Knights eldest sons.
Barons.	Baronets younger sons.
Speaker of the house of commons.	Knights younger sons.
Lords commissioners of the great seal.	Colonels.
Viscounts eldest sons.	Serjeants at law.
Earl's younger sons.	Doctors.
Baron's eldest sons.	Esquires.
Knights of the garter.	Gentlemen.
Privy counsellors.	Yeomen.
Chancellor of the exchequer,	Tradesmen.
Chancellor of the duchy,	Artificers.
	Labourers.

Note, married women and widows are intitled to the same rank among each other, as their husbands would respectively have been between themselves, except such rank as is merely professional or official; and unmarried women, to the same rank as their elder brothers would bear among men, during the lives of their fathers. 1 *Black.* 405.

By a late standing order of the house of lords, an exact pedigree of each peer and his family, shall, on the day of his first admission, be delivered to the house by garter the principal king at arms. 3 *Black.* 106.

**PRECONTRACT** of marriage, is a mutual promise or covenant of a marriage to be had afterwards; and is either *per verba de presenti*, or *per verba de futuro*. Heretofore the spiritual judge would compel a contract *per verba de presenti*; that is, a contract of present marriage, to be carried into execution; but now, by statute 26 G. 2. c. 23. no suit shall

shall be had in any ecclesiastical court, to compel the celebration of any marriage by reason of any contract of marriage, either *per verba de presenti*, or *per verba de futuro*.

**PREGNANCY**, is a plea in stay of execution, when a woman is convicted of a capital crime, alleging that she is with child; in which case, the judge must direct a jury of twelve matrons or discreet women to inquire of the fact: and if they bring in their verdict *quick with child*, (for barely *with child*, unless it be alive, is not sufficient,) execution shall be stayed generally till the next session; and so from session to session, till either she be delivered, or proves by the course of nature, not to have been with child. But if she once hath had the benefit of this reprieve, and been delivered, and afterwards becomes pregnant again, she shall not be intitled to the benefit of a further respite; for she may then be executed before the second child is quick in the womb. 4 *Black.* 395.

**PREMISSES** in a deed, is that part in the beginning thereof, wherein are set forth the names of the parties, with their titles and additions; and wherein are recited such deeds, agreements, or matters of fact, as are necessary to explain the reasons upon which the present transaction is founded. And herein also is set down the consideration upon which the deed is made, and the certainty of the thing granted. 2 *Black.* 298.

It is also commonly used to denote the lands granted, or other subject matter of the deed or conveyance.

**PREROGATIVE**, (from *præ*, *ante*, and *rogare*, to ask or demand,) is a word of great extent, including all the rights which by law the king hath, as chief of the common wealth, and as intrusted with the execution of the laws. 4 *New Abr.* 149. *Co. Lit.* 90.

But although the king is intrusted with the executive part, and from him all justice is said to flow, yet he is to make the law of the land the rule of his government; that being the measure, as well of the power as of the subjects obedience; for as the law asserts, maintains, and provides for the safety of the king's royal person, crown, and dignity,

nity, and all his just rights, so it likewise declares and asserts the rights and liberties of the subject. 1 *And.* 153. *Co. Lit.* 19. 75. 4 *Co.* 124. 4 *New Abr.* 149.

And all prerogatives must be for the advantage of the people, otherwise they ought not to be allowed by law. *Adcor.* 672. 4 *New Abr.* 149.

For more on this subject. See *Black. Com.* 1 & 4 vols.

**PREROGATIVE COURT** of the archbishop, is that court wherein all testaments are proved, and all administrations granted, where the party dying within the province hath *bona notabilia* in some other diocese than where he dieth; and is so called from the archbishop's having a *prerogative* throughout his whole province for the said purposes. From which court an appeal lies to the delegates. 4 *Inst.* 335.

**PRESCRIPTION**, is a title acquired by use and time, and allowed by the law; as when a man claims any thing because he and his ancestors, or they whose estate he hath, have had, or used it all the time, whereof no memory is to the contrary: or it is, where for continuance of time, beyond the memory of man, a particular person hath a particular right against another. 1 *Inst.* 113.

There is a difference between *prescription*, *custom*, and *usage*; *prescription* hath respect to a certain person, who by intentment may have continuance for ever; as, for instance, he and all they whose estate he hath in such a thing, this is a prescription: but *custom* is local, and always applied to a certain place; as that time out of mind there hath been such a custom in such a place: and *prescription* belongeth to one or a few only, but *custom* belongeth to all: now *usage* differs from both; for it may be either to persons or places; as to the inhabitants of a town to have a way, and the like. 1 *Inst.* 114.

Prescription must be *time out of mind*; though it is not the length of time that begets the right of prescription, but it is a presumption in law, that a possession cannot continue so long quiet and not interrupted, and it was against right, or injurious to another. 1 *Inst.* 114.

Nothing but *incorporeal* hereditaments can be claimed by prescription, as a right of a way, a common, or the like; but

but no prescription can give a title to lands, and other corporeal substances, of which more certain evidence may be had. 2 *Black.* 264.

A prescription *must always be laid in him that is tenant of the fee.* A tenant for life, for years, at will, or a copyholder, cannot prescribe; for as prescription is usage beyond time of memory, it is absurd that they should pretend to prescribe, whose estate commenced within the remembrance of man. And therefore the copyholder must prescribe under cover of the lord's estate, and the tenant for life under cover of the tenant in fee-simple. 2 *Black.* 265.

A prescription *cannot be for a thing which cannot be raised by grant.* For the law allows prescription only in supply of the loss of a grant; and therefore every prescription presupposes a grant to have existed. Thus a lord of a manor cannot prescribe to raise a tax or toll upon strangers; for as such claim could never have been good by any grant, it shall not be good by prescription. *Id.*

*What is to arise by matter of record cannot be prescribed for,* but must be claimed by grant entered on record; such as, for instance, the royal franchises of deodands, felons goods, and the like. These not being forfeited till the matter on which they arise is found by the inquisition of a jury, and so made a matter of record, the forfeiture itself cannot be claimed by any inferior title. But the franchises of treasure trove, waifs, estrays, and the like, may be claimed by prescription; for they arise from private contingencies, and not from any matter of record. *Id.*

Among things incorporeal, which may be claimed by prescription, a distinction must be made with regard to the manner of prescribing; that is, whether a man shall prescribe in a *que estate*; that is to say, in himself and those whose estate he holds, or in him and his ancestors; for if a man prescribes in a *que estate*, nothing is claimable by this prescription, but such things as are incident, appendant, or appurtenant to lands; for it would be absurd to claim any thing as the consequence, or appendix of an estate, with which the thing claimed hath no connexion: but if he prescribes in himself and his ancestors, he may prescribe for any thing whatsoever that lies in grant; not only things that are appurtenant, but also such things as may be in gross. Therefore a man may prescribe, that he, and those whose estate he hath in such a manor, have used to hold an *advowson*  
*appendant*



*appendant* to that manor; but if the advowson be a distinct inheritance, and not *appendant*, then he can only prescribe in himself and his ancestors. So also a man may prescribe in a *que estate* for a *common appurtenant* to a manor; but if he would prescribe for a *common in gross*, he must prescribe in himself and his ancestors. 2 *Black.* 266.

**PRESENTATION** to a benefice, is the offering a clerk to the ordinary to be admitted. And this an *infant* may do, though of never so tender age; for the ordinary is judge of the fitness of the person presented.

*Coparceners* may join in a presentation; but if they cannot agree, then the eldest shall present first, and the rest in their turns.

*Jointenants* or *tenants in common* must all join; for if they present singly, the bishop may refuse the clerk.

If a *married woman* hath title to present, she and her husband must join in the presentation; and if she dies, he shall present as tenant by the *curtesy*.

A *widow* has only the third turn, after the heir has presented twice.

After presentation, the bishop has the right of examination of the person presented; and if he finds him insufficient, he may refuse him. The most common and ordinary cause of refusal is want of learning: but there are other causes; as if a man hath been convicted of perjury, or other grievous crime, if he be outlawed, excommunicate, or an heretic.

If the refusal be for heresy, want of learning, or other matter of ecclesiastical cognizance, the bishop, if the patron is a layman, must give notice to him of the refusal; otherwise lapse will not incur: but if the cause be temporal, the bishop is not bound to give notice.

If the bishop doth refuse without good cause, the patron hath a remedy against him by a *quare impedit* in the temporal court; and the clerk hath a remedy by *duplex querela* in the court spiritual.

**PRESENTMENT** of *offences*, is that which the grand jury find of their own knowledge, and present to the court, without any bill of indictment laid before them at the suit of the king; as the presentment of a nuisance, a libel, and the like; upon which, the officer of the court must afterwards frame an indictment, before the party presented can be put to answer it. There are also presentations by justices  
of

of the peace, constables, surveyors of the highways, churchwardens, and others, of matters belonging to their respective offices.

**PRESENTMENT** *of copyhold surrenders*, is an information in court, to acquaint the lord, or his steward, with a surrender made out of court; which surrender is not effectual till presented in court. By the general customs of manors, it is to be made at the next court baron immediately after the surrender; but by special custom, it may be at the second or other subsequent court. The surrender must be made in court by the same person that took the surrender, then presented by the homage. If a man who hath surrendered out of court dies before presentment, and the presentment is made after his death, according to the custom, this is sufficient. So also, if he to whose use the surrender is made, dies before presentment, yet, upon presentment made after his death, his heir, according to the custom, shall be admitted. The same law is, if those into whose hands the surrender was made, die before presentment; for, upon sufficient proof in court that such a surrender was made, the lord shall be compelled to admit accordingly. 2 *Black.* 369.

**PRESSING** seamen for the royal navy hath been a matter of some dispute; but it now seems to be settled that the king hath a power by the common law, to issue his commission to the admiralty to compel seamen into the service; and this power is implied in several late acts of parliament, referring thereunto as a thing well known. *Fest.* 154.

**PRESUMPTION**, is a supposition, opinion, or belief, previously formed, and is of three sorts; violent, probable, and light or temerary. Violent presumption oftentimes amounts to full proof; as if one be run through the body with a sword in an house, whereof he instantly dies, and a man is seen to come out of that house with a bloody sword, and no other person was at that time in the house; probable presumption moveth little; but light or temerary presumption moveth not at all. 1 *Inst.* 6.

If all the witnesses to a deed be dead, then violent presumption, which stands for a proof, is continual and quiet possession;

possession; although the deed may receive credit from comparing of seals, writing, and other circumstances. *Id.*

**PRESUMPTIVE HEIR**, is spoken in distinction from an heir *apparent*. An heir *apparent* is one whose right of inheritance is indefeasible, provided he outlives the ancestor, as the eldest son or his issue. A *presumptive* heir is one who, if the ancestor should die immediately, would in the present circumstances of things be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother, whose presumptive succession may be destroyed by the birth of a child; or a daughter whose present expectation may be cut off by the birth of a son. 2 *Black.* 208.

**PRETENDED TITLES.** See TITLE, BUYING OF.

**PRETENDER.** If any of the sons of the late pretender to the crown of this realm shall land, or attempt to land, in this kingdom, or be found in *Great Britain* or *Ireland*, he shall be attainted of high treason. And if any person shall correspond with any of them, or remit money for their use, he shall be guilty of high treason. 1 *An. st.* 2. c. 17. 17 *G.* 2. c. 39.

And there is an oath, 13 *W.* c. 6. commonly called the oath of abjuration, required to be taken by all persons in any office, trust, or employment, recognizing his majesty's right to the crown, under the act of settlement, engaging to support him, promising to disclose all conspiracies against him, and expressly renouncing any claim of the descendants of the late Pretender.

**PRIMER FINE**, or *pra fine*, is a sum due to the king, on suing out a *precipe* or writ of covenant, in order to the levying a fine; being a noble for every five marks of land sued for; that is, one tenth of the annual value. It is called the *primer*, or *first fine*, because there is another fine due afterwards, in the course of the proceedings, called a *post-fine*. 2 *Black.* 350.

**PRIMER SEISIN**, *prima seifina*, the first seisin or possession. It was a branch of the king's prerogative, whereby he had the first possession, or profits for a year, of all lands  
and

and tenements holden of him *in capite*, whereof his tenant died seised in fee, his heir being then of full age; if the heir was under age, the king took the profits until the heir came of age.

**PRINCIPAL AND ACCESSARY.** *Principal* is the person who commits the offence; *accessary* is he who is not the chief actor, but is some way concerned therein, either before or after the felony committed. A man may be principal in two degrees; a principal in the first degree, is he that is the actor, or absolute perpetrator of the crime: and a principal in the second degree, is he who is *present*, aiding and abetting the fact to be done: which presence need not always be an actual immediate standing by, within sight or hearing of the fact: but there may be also a constructive presence; as when one commits a robbery or murder, and another keeps watch or guard at some convenient distance; or where one man administers poison, which had been prepared by another, though not actually present when it was taken.

**PRIORITY**, is an antiquity of tenure, in comparison of another less ancient, which latter is termed *posteriority*. A tenant may hold by priority of one lord, and by posteriority of another. *Old Nat. Brev.* 94.

A *prior-suit* depending, may be pleaded in abatement of a subsequent action or prosecution.

A *prior mortgage* ought to be first paid off. But there is no priority of time in *judgments*; but the judgment first executed shall be first paid.

If two *informations* be exhibited on the very same day, it seems that they mutually abate each other. *2 Haw.* 275.

*Debts* ought to be paid by an executor or administrator, according to their priority; as debts due to the king, on record or specialty before judgments, statutes, or recognizances; next to these, debts due on special contract; as for rent, or upon bonds, covenants, and the like, under seal; and lastly, debts on simple contracts; as upon notes unsealed, and verbal promises. *2 Black.* 511.

**PRIORY**, is a society of religious persons, where the head is termed a prior or prioress; of which, in this kingdom, there were two sorts: 1. Where the prior was chief governor, as fully as an abbot within his abbey; of which

VOL. II.

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kind were all the cathedral priors, and most of the order of *St. Auslin*. 2. Where the priory was a cell, subordinate to some greater abbey, and the prior was placed and displaced at the pleasure of the abbot.

*Alien priory*, was a cell to some foreign monastery; for when manors or tithes were given, as was frequently done, to foreign monasteries, the monks built convenient houses here for the reception of a small convent, and then sent over such a number as they thought proper, constituting priors over them. In the wars between *England* and *France*, these estates were generally seized by the English, and were restored again upon a peace.

**PRISAGE**, was a custom due to the king, of the wines brought in by the merchants of *England*, of every ship having twenty tons or more. It was called *prisage*, because it was a *taking* or purveyance for wine to the king's use; it was also called *butlerage*, because the king's chief *butler* received it. 4 *Inst.* 30.

**PRISON.** See **GAOL**.

**PRISON BREAKING**, at the common law, was felony, for whatever cause the party was imprisoned. But by the statute *de frangentibus prisonam*, 1 *Ed.* 2. *§.* 2. the severity of the common law is mitigated, which enacts, that no person shall have judgment of life or member for breaking prison, unless committed for some capital offence. So that, unless the commitment be for treason or felony, the breaking of prison is not felony, but is otherwise punishable, as a misdemeanor only, by fine and imprisonment. 4 *Black.* 130.

Any place whatever, wherein a person under a lawful arrest, for a supposed crime, is restrained of his liberty, whether in the stocks, or street, or in the common gaol, or the house of a constable, or a private person, is a prison in this respect, for a prison is nothing else but a restraint of liberty; and therefore this extends as well to a prison in law, as to a prison in deed. 2 *Inst.* 589.

**PRIVILEGE**, is defined to be a private or particular law, whereby a private person or corporation is exempted from the rigour of the common law; or it is some benefit or advantage granted or allowed to any persons contrary to the course of law; and

and is sometimes used for a place that hath a special immunity. A privilege is therefore *personal* or *real*; *personal*, as of members of parliament and of convocation, and their menial servants, not to be arrested in the time of parliament or convocation, nor for certain days before or after; so also of peers, ambassadors, and their servants: *real*, is that which is granted to a place; as to the king's palaces, the courts at *Westminster*, and the universities, that their members and officers must be sued within their precincts and courts, and not elsewhere.

Formerly, one of the greatest obstructions to public justice, was the multitude of pretended privileged places, where indigent persons assembled together, to shelter themselves from justice, (especially in *London* and *Southwark*,) under the pretext of their having been ancient palaces of the crown, or the like; all of which sanctuaries are now demolished by several acts of parliament. 4 *Black.* 129.

**PRIVY.** *Privies* are such as are partakers, or had any interest in any action or thing, or any relation to another. These are either privies in *estate*, as donor and donee, lessor and lessee; or privies in *blood*, as heir to the ancestor; privies in *representation*, as executors to testators, administrators to intestates; and privies in *tenure*, as lord and tenant. *Wood. b. 2. c. 3.*

Privies in *estate* or *blood*, are bound or barred presently for ever by a fine, if they claim the same title that their ancestors had, that levied the fine, notwithstanding their being under the impediments of infancy, coverture, insanity, or the like. *Id.*

**PROBATE** of wills, was originally of temporal cognizance; afterwards, the jurisdiction thereof belonged to the county court, where the bishop and sheriff jointly sat as judges, in matters both temporal and spiritual; and finally, after the separation of the ecclesiastical courts from the temporal, the jurisdiction of wills generally followed the courts ecclesiastical; yet to this day, lords of manors, and others, have the probate of testaments within their liberties, by special privilege.

Generally, the will is to be proved before the bishop of the diocese where the testator inhabited, or before his officer specially appointed; but in case the testator had goods in

some other diocese than that wherein he died, to the value of 5*l.* or upwards, (which are commonly called *bona notabilia*,) the testament must be proved in the prerogative court of the archbishop of the province.

A will of lands is not subject to the ecclesiastical jurisdiction. But where a will concerns both lands and goods, the probate thereof ought to be intire in the spiritual court, and not of parcels; but the probate of the will for the lands, will not prejudice the heir at law, for it shall not be evidence at the common law, nor shall the examination of the witnesses, in the spiritual court, be given in evidence at the common law.

But a will of goods is not of any effect, until probate is made thereof; nor can an executor or other person give a will in evidence concerning personal estate, without producing the probate; for it is no will until it hath received a sanction by the spiritual judge, for he is to determine whether it be a will or no.

Where there are more executors than one, and some of them do refuse, and others of them prove the will, they who refuse may afterwards come in and have probate in like manner as the other. If they all refuse, administration shall be granted to whom the ordinary thinks fit, with the will annexed to such administration.

The manner of proving testaments is of two sorts; the one is called the vulgar, or *common form*; the other is termed the *solemn form*, or form of law. The common form is most commonly upon the executor's own oath, that he believes the writing exhibited to be the true last will and testament of the deceased; the solemn form is by witnesses first calling in all persons having interest, in case the will shall not be proved to be a good will.

After the will is approved of by the judge, the original is deposited in the registry of the ordinary; and a copy thereof, in parchment, is made out under the seal of the ordinary, and delivered to the executor, together with a certificate of its having been proved before him: all which together is usually stiled the probate.

PROCEDENDO, is a writ which lieth where a cause hath been called up from an inferior to a superior court, and such superior court finds the suggestion for removing it to be insufficient; in which case, the superior court, by this writ,  
 . remits

remits the cause to the court from whence it came, commanding the said inferior court to *proceed* to the final hearing and determining the same.

PROCESS, is that which *proceedeth* or goeth out upon former matter, either *original* or *judicial*: and this is in causes either *civil* or *criminal*. *Lamb.* 519.

Process in *civil* causes, is called *original* process, when it is founded upon the *original* writ; and also to distinguish it from *mesne* or intermediate process, which issues pending the suit, upon some collateral interlocutory matter; as to summon juries, witnesses, and the like. *Mesne* process, is also sometimes put in contradistinction to *final* process, or process of *execution*; and then it signifies all such process as intervenes between the beginning and end of a suit. 3 *Black.* 279.

In *criminal* cases, upon an indictment for a misdemeanor not being felony, or a greater offence, the first process is a *venire*, or summons; and if, by the return thereof, it appears that the party hath lands in the county whereby he may be distrained, then a *districks infinite* shall be awarded, from time to time, until he shall appear; and by virtue thereof, he shall forfeit, on every default, so much as the sheriff shall return upon him in issues. But if it be returned upon the *venire* that he hath no lands, a writ of *capias* shall issue, to take his body; and if he cannot be taken on the first *capias*, then a second and a third shall issue, called an *alias* and a *pluries capias*; and last of all, an *exigent*, in order to outlawry. But on an indictment for treason or felony, a *capias* is the first process. 4 *Black.* 319.

Where the inhabitants of a parish are indicted or presented, the process is first a *venire*, and then a *disfringas*. *Crown Circ.* 21.

PROCHEIN AMY, *propinquier amicus*, is he that appears in court for an infant, who sues any action, and aids the infant in pursuit thereof.

PROCLAMATION. From the king being the fountain of justice, hath been deduced the prerogative of issuing proclamations, which is vested in the king alone. These proclamations have then a binding force, when (as Sir *Edward Coke* observes) they are grounded upon, and enforce the law of the realm. For though the making of laws is intirely



the work of a distinct part (the legislative branch) of the sovereign power, yet the manner, time, and circumstances of putting those laws in execution, must frequently be left to the discretion of the executive magistrate. And therefore his constitutions or edicts concerning these points, which we call proclamations, are binding upon the subject, where they do not either contradict the old laws, or tend to abolish new ones; but only enforce the execution of such laws as are already in being, in such manner as the king shall judge necessary. 1 *Black.* 270.

Thus the established law is, that the king may prohibit any of his subjects from leaving the realm; a proclamation therefore forbidding this in general for three weeks, by laying an embargo upon all shipping in time of war, will be equally binding as an act of parliament, because founded upon a prior law. But a proclamation to lay an embargo in time of peace, upon all vessels laden with wheat, (though in the time of a public scarcity,) being contrary to law, the advisers of such proclamation, and all persons acting under it, found it necessary to be indemnified by a special act of parliament, 7 *G.* 3. c. 7.

A proclamation for disarming papists is also binding, being only in execution of what the legislature hath first ordained: but a proclamation for allowing arms to papists, or for disarming any protestant subjects, will not bind; because the first would be to assume a dispensing power, the latter a legislative one; to the vesting of either of which in any single person, the laws of *England* are absolute strangers. 1 *Black.* 271.

When any fine of land is passed, proclamation is solemnly made thereof, in the court of common pleas, where levied, after ingrossing it; and transcripts also are sent to the judges of assize, and justices of the peace of the county where the lands lie, to be openly proclaimed there.

On a suit commenced in chancery, if the defendant doth not appear, an attachment is issued against him; and if the sheriff returns that he is not to be found, then an attachment with proclamations issues, directing the sheriff to cause public proclamations to be made throughout the county, to summon the defendant, upon his allegiance, personally to appear and answer. If he still stands out in contempt, a commission of rebellion is awarded against him, for not obeying the proclamations according to his allegiance. 3 *Black.* 444.

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When a defendant absconds, and cannot be found, there shall issue a writ, commanding the sheriff to proclaim him in five county courts successively; and if he then does not appear, he shall, by the judgment of the coroners of the county, be outlawed. 3 *Black.* 283.

The legitimization of money, and giving to it its denominative value, is one special part of the king's prerogative. Also, by his proclamation, he may legitimate foreign coin, and make it current money of this kingdom. 1 *Inst.* 207.

The king, by proclamation, (with the advice of his privy council,) may call or dissolve parliaments. 4 *Inst.* 4.

On the riot act, 1 *G. c.* 5. if, after proclamation, any twelve or more of the rioters shall be found together, they shall be guilty of felony without benefit of clergy. And if any person shall oppose the reading of the proclamation, he shall be in like manner guilty.

**PROCTOR**, *procurator*, is one who is appointed to represent in judgment the party who impowers him, by writing under his hand called a *proxy*. They are chiefly in use in the courts of the civil or ecclesiastical law.

*Proctors of the clergy*, are those who are chosen and appointed to appear for cathedral or collegiate churches, as also for the common clergy of every diocese, to be their representatives in convocation.

**PROCURATIONS**, *procuraciones*, are certain sums of money paid yearly by the inferior clergy, to the bishop or archdeacon, for the charges of visitation. The procurations were anciently made, by *procuring* victuals, and other provisions in specie; but the demands of these in kind, being thought to be exorbitant, and divers complaints being made thereof to the provincial councils, and to the popes, it became at last universally settled, to pay a fixed sum in money, instead of a procuration in meat, drink, provender, and other accommodation. These being merely an ecclesiastical duty, are only suable in the spiritual court; and may be levied by sequestration, or other ecclesiastical process. *Gibf.* 1546.

**PROCURATOR**, is one who hath a charge committed to him by any person; in which general signification it hath been applied to a vicar or lieutenant, who acts instead of

another; and we read of *procurator regni*, and *procurator reipublicæ*, which is a public magistrate: also *proxies* of lords in parliament, are, in our law books, called *procuratores*. The bishops are sometimes termed *procuratores ecclesiarum*; and the advocates of religious houses, who were to solicit the interest, and plead the causes of the societies, were denominated *procuratores monasterii*. And from this word proceeds the common word *proctor*.

**PROCURATORIUM**, was the proxy or instrument by which any person or community did constitute or delegate their proctor or proctors, to represent them in any judicial court or cause.

**PROFANENESS**. All blasphemies against God, as denying his being or providence; and all contumelious reproaches of Jesus Christ; all profane scoffing at the holy scripture, or exposing any part thereof to contempt or ridicule; and all open lewdness, grossly scandalous; are punishable (not only by the spiritual court, but also) by the temporal courts, by fine and imprisonment; and also such corporal punishment as to the court in discretion shall seem meet, according to the heinousness of the crime.  
1 *Harv.* 7.

By the 3 *Jac. c.* 21. if any person shall, in any stage play, interlude, show, May-game, or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit 1*o*l.

And by the 9 & 10 *W. c.* 32. if any person, educated in the christian religion, or professing the same, shall, by writing, printing, or advised speaking, deny any one of the persons in the Holy Trinity to be God; or maintain that there are more gods than one; he shall, for the first offence, be disabled to hold any office; for the second, he shall moreover be disabled to prosecute any action, or to be guardian, executor, administrator, or legatee, and shall be imprisoned for three years.

**PROFERT IN CURIA**, is where the plaintiff in an action declares on a deed, or the defendant pleads a deed, he must do it with producing the same in court, to the end that the other party may, at his own charges, have a copy of it;

it; and until then he is not obliged to answer it. 2 *Lill. Abr.* 382. But by statute 4 & 5 *An. c.* 16. no advantage or exception shall be taken for want of a *profert in curia*; but the court shall give judgment according to the very right of the cause, without regarding any such omission and defect, except the same be specially and particularly set down and shewn for cause of demurrer.

**PROFESSION**, is used particularly for the entering into any religious order; by which the monk offered himself to God by a vow of three things; obedience, chastity, and poverty, which he promised constantly to observe: and this was called *sanctæ religionis professio*, and the monk a *religious professed*. And this entering into religion, whereby a man is shut up from all the common offices of life, is by our law termed a *civil death*.

**PROHIBITION**, is a writ properly issuing only out of the court of king's bench, being the king's prerogative writ; but, for the furtherance of justice, it may now also be had in some cases out of the court of chancery, common pleas, or exchequer, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, doth not belong to that jurisdiction, but to the cognizance of some other court. 3 *Black.* 112.

This writ may issue either to inferior courts of common law, as to the courts of the counties palatine, or principality of *Wales*, if they hold plea of land or other matters not lying within their respective franchises; to the county court, or court baron, when they attempt to hold plea of any matter of the value of 40*s.*; to the court of chivalry, or of the admiralty, if they hold plea of a contract made or to be executed within this kingdom; or to the ecclesiastical court, if they attempt to try the validity of a custom, or if in handling of matters within their cognizance, they transgress the bounds prescribed to them by the laws of *England*; as where they require two witnesses to prove the payment of a legacy, or the like. *Id.*

For the obtaining of a prohibition, the party aggrieved in the court below applies to the superior court, setting forth in a suggestion upon record the nature and cause of his complaint. And sometimes affidavit is necessary to be made of



the truth of the suggestion; the distinction in which case, is this: where the matter suggested appears upon the face of the libel or other proceedings, the court never requires an affidavit; but if it doth not appear upon the face of the proceedings, the court will require affidavit of the truth of the suggestion. *Bur. Mansf.* 2036.

Upon the court being satisfied that the matter alleged by the suggestion is sufficient, the writ of prohibition immediately issues; commanding the judge not to hold, and the party not to prosecute the plea. And if either the judge or party shall proceed after such prohibition, an attachment may be had against them for the contempt by the court that awarded it, and an action will lie against them to repair the party in damages. 3 *Black.* 113.

But sometimes the point may be too nice and doubtful to be decided merely upon a motion; and then, for the more solemn determination of the question, the party applying for the prohibition is directed by the court to *declare* in prohibition; that is, to prosecute an action, by filing a *declaration* against the other, upon a supposition, or fiction, that he hath proceeded in the suit below, notwithstanding the writ of prohibition. And if upon demurrer and argument, the court shall finally be of opinion, that the matter suggested is a good and sufficient ground of prohibition in point of law, then judgment, with nominal damages, shall be given for the party complaining; and the defendant, and also the inferior court, shall be prohibited from proceeding any farther. On the other hand, if the superior court shall think it no competent ground for restraining the inferior jurisdiction, then judgment shall be given against him who applied for the prohibition in the court above, and a writ of *consultation* shall be awarded; so called, because upon deliberation and consultation had, the judges find the prohibition to be ill founded, and therefore by this writ they return the cause to its original jurisdiction, to be there determined in the inferior court. *Id.*

**PROHIBITION TO STAY WASTE,** (*prohibitio de vasto,*) is a writ judicial directed to the tenant, prohibiting him from making waste upon the land in controversy, during the suit. So also a prohibition shall be granted to any person who commits waste in the houses of the incumbent of a spiritual living, or that cuts down any trees on the glebe, or doth any other waste.

PROMISE

**PROMISE**, is where persons bind themselves by words to do or perform such a thing as is agreed on: it is in the nature of a verbal covenant, and wants nothing but the solemnity of writing and sealing to make it absolutely the same. Yet for the breach of it, the remedy is different; for instead of an action of covenant, there lies only an action upon the case, the damages whereof are to be estimated and determined by the jury. As if a builder promises or undertakes to another, that he will build and cover his house within a time limited, and fails to do it, an action upon the case lies against the builder for this breach of his promise, and the plaintiff shall recover a pecuniary satisfaction for the injury sustained by such delay. So in the case of a debt by simple contract, if the debtor promises to pay it and doth not, this breach of promise intitles the creditor to his action on the case, instead of being driven to an action of debt. Some agreements indeed, though never so expressly made, are deemed of so important a nature, that they ought not to rest in verbal promise only; and therefore, by the 29 C. 2. c. 3. commonly called the statute of frauds and perjuries, it is enacted, that in the five following cases, no verbal promise shall be sufficient to ground an action upon, but at the least some note or memorandum of it shall be made in writing, and signed by the party to be charged therewith: 1. Where an executor or administrator promises to answer damages out of his own estate. 2. Where a man undertakes to answer for the debt, default, or miscarriage of another. 3. Where any agreement is made upon consideration of marriage. 4. Where any contract or sale is made of lands, tenements, or hereditaments, or any interest therein. 5. Where there is any agreement that is not to be performed within a year from the making thereof. In all these cases, a mere verbal promise is void. 3 *Black.* 157.

**PROMISSORY NOTE**, or *note of hand*. See **BILL OF EXCHANGE**.

**PROPERTY**, is the highest right a man can have to any thing, being used for that right which one hath to lands or tenements, goods or chattels, which no ways depend on another. For preserving property the law hath three rules: 1. No man is to deprive another of his property, or disturb

him

him in enjoying it. 2. Every person is bound to take due care of his own property, so as the neglect thereof may not injure his neighbour. 3. All persons must so use their right, that they do not in the manner of doing it damage their neighbours' property.

**PROROGUE**, signifies to prolong or to put off to another day. Prorogation of the parliament, is the continuance of it from one session to another; whereas the adjournment of it is the continuance of the same session from day to day. 1 *Black.* 186.

**PROTECTION**, in a general sense, is taken for that benefit and safety which every subject hath by the king's laws: every man who is a loyal subject is in the king's protection; and in this sense, to be out of the king's protection, is to be excluded the benefit of the law. In a special signification, a protection of the king is an act of grace, by writ issued out of chancery; which lies where a man is to pass over the sea in the king's service: and by this writ, when allowed in court, he shall be quit of all manner of suits between him and any other person until his return. 2 *Lill. Abr.* 398. But now these protections are seldom used, and are often ousted by act of parliament; as where it is said, that in such an action, no *essoins*, *protection*, or *wager of law*, shall be allowed.

**PROTEST**, *protestatio*, hath two applications; one by way of caution, to call witnesses, (as it were,) or openly affirm that he doth either not at all, or but conditionally, yield his consent to any act, or unto the proceeding of a judge in a court, wherein his jurisdiction is doubtful, or to answer on his oath further than by law he is bound. The other is by way of complaint, as to protest a man's bill of exchange. For which, see **BILL OF EXCHANGE**.

In the house of lords, every peer hath a right, with leave of the house, when a vote passes contrary to his sentiments, to enter his dissent on the journals of the house, with the reasons for such dissent; which is usually styled his *protest*.

**PROTES-**

**PROTESTANDO**, is a word used to avoid duplicity in pleading: it prevents the party that makes it from being concluded by the plea he is about to make. Every plea ought to be simple, intire, connected, and confined to one single point; it must never be intangled with a variety of distinct independent answers to the same matter, which must require as many different replies, and introduce a multitude of issues upon one and the same dispute. Yet it is frequently expedient to plead in such a manner as to avoid any implied admission of a fact which cannot with propriety or safety be positively affirmed or denied: and this may be done by what is called a *protestation*; whereby the party interposeth an oblique allegation or denial of some fact, protesting (*protestando*) that such a matter doth or doth not exist; and at the same time avoiding a direct affirmation or denial: as if an award be set forth by the plaintiff, and he can assign a breach in one part of it by the defendant, namely, the non-payment of a sum of money, and yet is afraid to admit the performance of the rest of the award, or to aver in general a non-performance of any part of it, lest something should appear to have been performed; he may save to himself any advantage he might hereafter make of the general non-performance, by alleging *that* by protestation, and plead only the non-payment of the money. 3 *Black.* 311.

**PROTHONOTARY**, is a chief officer or clerk of the common pleas and king's bench; the former hath three, and the latter but one; whose office is to record all civil actions, as the clerk of the crown-office doth criminal causes in that court. Those of the common pleas, enter and inroll all manner of declarations, pleadings, assises, judgments, &c.

**PROVINCE**. The ecclesiastical division of this kingdom is into two provinces; of *Canterbury* and *York*. A province is the circuit of an archbishop's jurisdiction, which is subdivided into bishopricks or dioceses. 1 *Black.* 111.

**PROVINCIAL CONSTITUTIONS**, in this kingdom, were decrees made in the provincial synods, held under divers archbishops of *Canterbury*, from *Stephen Langton*, in the reign of *Hen. 3.* to *Henry Chichele*, in the reign of *Hen. 5.* which  
were



were also adopted by the province of *York*, in the reign of *Hen. 6.*

**PROVISO**, in a deed, is generally taken for a *condition*, on the performance whereof the validity of the deed depends; but it differs from it in several respects; for a condition is usually created by the grantor or lessor, but a proviso by the grantee or lessee. 2 *Nelf. Abr.* 21.

A proviso always implies a condition, if there be no words subsequent, which may change it into a covenant. And where a proviso is a condition, it ought to do the office of a condition; that is, make the estate conditional, and shall have reference to the estate, and be annexed to it, but shall not make it void without entry, as a limitation will. *Cro. Eliz.* 242.

A lease was made for years, rendering rent at such a day, proviso, if the rent be arrear for one month after, the lease to be void. The question was, whether this was a condition or limitation; for if it was a condition, then the lease is not determined without entry. Adjudged, that it was a limitation, though the words were conditional, because it appeared by the lease itself, that it was the express agreement of the parties, that the lease shall be void on non-payment of the rent, and it shall be void without entry. *Mo.* 291.

*Trial by proviso*, is where the plaintiff forbears to bring his cause to trial, and the defendant takes a *venire facias*, directed to the sheriff, with a clause, "provided, that if the plaintiff taketh out any writ to that purpose, the sheriff shall summon only one jury upon them both." *T. L.*

**PROVISOR**, heretofore was one nominated by the pope to a benefice, before it became void, in prejudice of the right of the true patron, against which several statutes were made. By 25 *Ed. 3. §. 6.* if any reservation or provision be made by the court of *Rome*, of any dignity or benefice, in disturbance of the rightful donors, the king shall present for that time, if the patrons themselves shall not exercise their right. And if the persons lawfully presented, shall be disturbed by such provisors, then the said provisors shall be attached by their bodies, and imprisoned till they make fine to the king, and satisfaction to the party grieved. And by 27 *Ed. 3. c. 1.* commonly called the statute of provisors, they

they shall be put out of the king's protection, their lands and goods forfeited to the king, and their bodies imprisoned at the king's will.

**PROVOST MARSHAL**, is an officer of the navy, who hath the charge of prisoners taken at sea, and is sometimes used for like purposes at land, or to seize or arrest any within the jurisdiction of his office. 13 C. 2. c. 9. *Cowell*.

**PROXIES**, are persons appointed instead of others to represent them.

**PUBERTY**, is the ripeness of age, at which persons may consent to marry; which, by our law, is in women at the age of twelve, and men at fourteen.

**PUBLIC WORSHIP**: Every person above the age of sixteen years, having no lawful or reasonable excuse, who shall absent himself from church, chapel, or place of public worship, on *Sundays*, shall forfeit 12*d.* for every offence, and also 2*o**l.* a month. 1 *El. c. 2.* 23 *El. s. 1.* 29 *El. c. 6.*

And if any person shall disturb a preacher in his sermon, by word or deed, he shall be committed to gaol by two justices of the peace, for three months, and further to the next sessions. 1 *Mary, Seff. 2. c. 3.*

And if any person shall willingly, and of purpose, come into any church, chapel, or other congregation, permitted by law, and disturb the same, or misuse any preacher or teacher, he shall, on conviction at the sessions, forfeit 2*o**l.* 1 *W. c. 18.*

**PUISNE**, Fr. younger, or born after.

**PUNISHMENT**, is the penalty of transgressing the law; and as debts are discharged to private persons by payment, so obligations to the public, for disturbing society, are discharged when the offender undergoes the punishment inflicted for his offence.

**PUR AUTER VIE**. An estate *pur auter vie*, is where a lease is made of lands or tenements to a man, to hold for the life of another person. Formerly, where the tenant had the estate granted to himself only (without mentioning his heirs) during the life of another person, and died during the life of that

that other person; in this case, he that could first enter upon the land, might lawfully retain the possession, during the life of such other person, by right of occupancy; but if the estate had been granted to a man and his *heirs*, there the heir might, and still may, enter and hold possession, and is called in law, a *special occupant*, as having a special exclusive right, by the terms of the original grant, to enter upon and occupy this estate during the life of him by whose life it was holden. 2 *Black.* 259.

By the 29 G. 2. c. 3. an estate *pur auter vie* shall be devisable by will; and if no devise be made thereof, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a *special occupancy*, as assets by descent, as in case of lands in fee simple: if there be no special occupant, it shall go to the executors or administrators of the party that had the estate thereof by grant, and shall be assets in their hands for payment of debts. And by 14 G. 2. c. 20. the surplus of such estate *pur auter vie*, after payment of debts, shall go in a course of distribution like a personal estate.

**PURCHASE**, (according to *Littleton*,) is the possession of lands or tenements that a man hath by his deed or agreement, unto which possession he cometh not by title of descent from any of his ancestors, or of his kindred, but by his own deed. *Litt. sect.* 12.

By *purchase*, the lawyers understand any method of acquiring an estate otherwise than by descent: it includes every other method of coming to an estate, but merely by inheritance, wherein the title is vested in a person, not by his own act or agreement, but by the simple operation of law. 1 *Black.* 215. 2 *Black.* 241.

Purchase, indeed, in its vulgar and confined acceptation, is applied only to such acquisitions of land, as are obtained by way of bargain and sale, for money, or some other valuable consideration. But this falls short of the legal idea of purchase; for if I give land freely to another, he is, in the eye of the law, a purchaser, and falls within *Littleton's* definition, for he comes to the estate by his own agreement, that is, he consents to the gift. *Id.*

A man who hath his father's estate settled upon him in tail, before he is born, is also a purchaser; for he takes quite another estate than the law of descents would have given him. *Id.*

Nay,

Nay, even if the ancestor deviseth his estate to his heir at law, by will, with other limitations, or in any other shape than the course of descents would direct, such heir shall take by purchase. *Id.*

But if a man, seised in fee, deviseth his whole estate to his heir at law, so that the heir takes neither a greater nor a less estate by the devise, than he would have done without it, he shall be adjudged to take by descent, even though it be charged with incumbrances for the benefit of creditors and others, who have demands on the estate of the ancestor. *Id.*

The difference, in effect, between the acquisition of an estate by descent, and by purchase, consists principally in these two points: 1. That by purchase, the estate acquires a new inheritable quality, and is descendible to the owner's blood in general, and not the blood only of some particular ancestor: for when a man takes an estate by purchase, he takes it not as a fee paternal or maternal, which would descend only to the heirs by the father's or mother's side; but he takes it as an ancient fee, or a fee of indefinite antiquity, whereby it becomes inheritable to his heirs general, first of the paternal, and then of the maternal line. 2. An estate taken by purchase, will not make the heir answerable for the acts of his ancestor, as an estate by descent will; for if the ancestor, by any deed, obligation, covenant, or the like, bindeth himself and his heirs, and dieth, this deed, obligation, or covenant, shall be binding upon the heir, so far forth only as he had any estate of inheritance vested in him (or in some other in trust for him) by descent from that ancestor, sufficient to answer the charge, whether he remains in possession, or hath aliened it before action brought; which *sufficient* estate is in law called *assets*, from the French word *assez*, enough. Therefore, if a man covenants for himself and his heirs, to keep my house in repair, I can then, and then only, compel his heir to perform this covenant, when he hath an estate sufficient for this purpose, or *assets* by descent from the covenantor: for though the covenant descends to the heir, whether he inherits any estate or no, it lies dormant, and is not compulsory, until he hath assets by descent. 2 *Black.* 243.

Where there is a purchaser for valuable consideration, without notice of a mortgage, the mortgagee cannot tack a bond to his mortgage, and can only be satisfied for his bond out of the general assets of the mortgagor; because in this



case, the estate, being not affets by descent, will not be liable to the bond debt. 3 *Atk.* 659:

**PURGATION**, is the purging or clearing a man's self of a crime, of which he is publicly suspected or accused; and anciently, was much in use in this kingdom, both with respect to civil and ecclesiastical offences. With respect to civil offences, it was of two sorts, either fire ordeal, or water ordeal; the former being confined to persons of higher rank, the latter to the common people. Fire ordeal was performed either by taking up in the hand, unhurt, a piece of red-hot iron, of one, two, or three pounds weight, or else by walking barefoot and blindfold, over nine red-hot ploughshares, laid lengthwise at unequal distances; and if the party escaped being hurt, he was adjudged innocent; but if it happened otherwise, he was condemned as guilty. 4 *Black.* 342.

Water ordeal was performed, either by plunging the bare arm up to the elbow in boiling water, and escaping unhurt thereby, or by casting the person suspected into a river or pond of cold water, and if he floated therein, without any action of swimming, it was deemed an evidence of his guilt; but if he sunk, he was acquitted. *Id.*

The ecclesiastical purgation was, when a man or woman lay under a common suspicion, or public fame of incontinence or other vice; if he denied that he was guilty, he had a purgation appointed; which was, that he himself should swear that he was innocent, and should bring a certain number of compurgators, who should swear that they believed what he swore was true. But this was abolished by the statute 13 C. 2. c. 12. which enacts, that no person shall be compelled to confess, or accuse, or purge himself of any criminal matter, whereby he may be liable to censure or punishment.

**PURLIEU**, comes from the French *pur*, clear, intire, and exempt; and *lieu*, a place: that is, a place intire, clear, or exempt from the forest; and signifies those grounds which Henry the second, Richard the first, or king John, added to their ancient forests, over other men's grounds, and were disafforested by the statute of *charta de foresta.* 4 *Inst.* 303.

But nevertheless the purlieu, as to some purposes, is forest still, and is disafforested as to the particular owners of the land, and for their benefit, and not generally to give liberty

liberty to any man to hunt the wild beasts, and spoil the vert. And if those beasts do escape out of the forest into the purlieu, the king hath a property in them still against any man, but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly, and not forestall them in their return towards the forest. *Manus* 366.

**PURPARTY**, Fr. *pour part*, (*pro parte*,) is that part or share of an estate, first held in common by parceners, which is by partition allotted to any of them. To make purparty, is to divide and sever the lands which fall to parceners, which till partition they held jointly and undivided.

**PURPRESTURE**, (from the French *pourpris*, hence also *purprisum*, an inclosure,) is where an house is erected, or an inclosure made, upon any part of the king's demesne lands of his crown, or of an highway, or common street, or public water, or such like public things; whereby a person endeavours to make that private to himself, which ought to be public: and for this an indictment lies at the common law, in the nature of a common nuisance. 1 *Inst.* 277. 2 *Inst.* 38.

**PURVEYANCE**, *provisio*, was a right enjoyed by the crown of buying up provisions and other necessities by the king's purveyors, for the use of the royal household, at an appraised valuation, in preference to all others, and even without consent of the owner; and also of forcibly impressing the carriages and horses of the subject, to do the king's business on the public roads, in the conveyance of timber, baggage, and the like, upon paying to the proprietor a settled price. These purveyors, in process of time, greatly abused their authority, and became a great oppression to the subject, so that at last the crown was prevailed upon to give up this branch of the prerogative, by the statute 12 C. 2. c. 24. and the parliament in recompence settled on the king and his successors part of the hereditary excise on ale and beer. 1 *Black.* 287.

**PUTURE**, Sir *Edward Coke* explains, as signifying *poture*, or drinking. It was a demand made by the officers of the forest, within the circuit of their perambulation, of

all kinds of victuals for themselves, their servants, horses, and dogs. Others, who call it *pulture*, explain it as signifying a demand in general; and derive it from the monks, who, before they were admitted, *pulsabant*, that is knocked at the gates for several days together.

## Q U A

**Q**UAKERS, were originally so called from their quaking and trembling in their extasies of devotion. They are, together with the other dissenters, intitled to the benefits of the act of toleration. They are also, by act of parliament, dispensed with from the formality of taking an oath, their solemn affirmation being allowed instead of it: but they shall not be admitted to give evidence in a criminal case, unless they be sworn. Their tithes, both great and small, may be recovered before justices of the peace, to any amount not exceeding 10/.

**QUANTUM MERUIT**, (that is, as much as he has deserved,) is an action on the case, grounded upon the promise of another, to pay him for doing any thing so much as he should deserve or *merit*. If a man retains any person to do work, or other thing for him, as a taylor to make a garment, a carrier to carry goods, or the like, without any certain agreement, in such case, the law implies, that he shall pay for the same as much as they are worth, and shall be reasonably demanded, for which this action may be brought; wherein he is at liberty to suggest, that the defendant promised to pay him so much as he reasonably deserved, and then to aver, that his trouble was worth such a particular sum, which the defendant has omitted to pay. But this valuation of his trouble is submitted to the determination of the jury, who will assess such a sum in damages as they think he really merited.  
3 Black. 161.

**QUANTUM VALEBAT**, is where one takes up goods or wares of a tradesman, without expressly agreeing for the price. In this case, the law concludes, that both parties did intentionally agree, that the real value of the goods should be paid; and an action on the case may be brought accordingly,

ingly, if the vendee refuses to pay that value. So it is, where the law obliges one to furnish another with goods or provisions; as an innkeeper his guests, and the like.  
3 Black. 161.

**QUARE CLAUSUM FREGIT.** Before the statute 19 H. 7. c. 9. giving the process of *capias* in all actions on the case, a practice had been introduced of commencing the suit by bringing an original writ of trespass *quare clausum fregit*, for breaking the plaintiff's close *vi et armis*; which, by the old common law, subjected the defendant's person to be arrested by writ of *capias*: and then afterwards, by connivance of the court, the plaintiff might proceed to prosecute for any other less forcible injury. This practice, (through custom, rather than necessity, and for saving some trouble and expence in suing out a special original adapted to the particular injury,) still continues in almost all cases, except in actions of debt; though now, by virtue of the statutes, a *capias* might be had upon almost every species of complaint.  
3 Black. 281.

**QUARE EJECIT INFRA TERMINUM**, is a writ that lieth for a lessee, where he is cast out of his farm, before his term is expired, against the feoffee of the land, or the lessor that ejects him; and the effect of it is, to recover his term again, and his damages. But since the introduction of fictitious ousters, whereby the title may be tried against any tenant in possession, (by what means soever he acquired it,) this action is fallen into disuse. 3 Black. 207.

**QUARE IMPEDIT**, is a writ which lies where one hath an advowson, and the parson dies, and another presents a clerk, or disturbs the rightful patron to present: in which case, the writ commands the disturber to permit the plaintiff to present a proper clerk, or otherwise to appear in court, and shew cause (*quare impedit*) why he hinders him. T. L.

It is most adviseable to bring the writ against both the bishop, the pretended patron, and the clerk. For if the bishop be left out, and the suit be not determined till the six months are past, the bishop is intitled to present by lapse, inasmuch as he is not party to the suit. If the patron be left out, the writ will abate; for the right of the patron is the principal question in the cause. And if the clerk be left out, and has received institution before the action brought, the



true patron by this suit may recover his right of patronage, but not the present turn. 3 *Black.* 247.

The bishop and the clerk usually disclaim all title, save only the one, as ordinary, to admit and institute; and the other, as presentee of the patron, who is left to defend his own right. *Id.* 249.

If the right, on trial, be found for the plaintiff, three things are to be inquired after: 1. If the church be full; and, if full, then of whose presentation: for if it be of the defendant's presentation, then the clerk is removeable by writ brought in due time. 2. Of what value the living is; in order to assess the damages, which are directed to be given by the statute 13 *Ed.* 1. c. 5. namely, to the amount of one year's value of the living. 3. In case of plenarty upon an usurpation, whether six months have passed between the avoidance, and the time of bringing this action; for if so, this is a sufficient bar to the action. *Id.*

**QUARE INCUMBRAVIT**, is a writ that lies, where two are in plea for the advowson of a church, and the bishop admits the clerk of one of them within the six months; then the other shall have this writ against the bishop, that he appear and shew cause *why he hath incumbered* the church. And if it be found by verdict, that the bishop hath incumbered the church, after a *ne admittas* delivered to him, and within six months after the avoidance, damages are to be awarded to the plaintiff, and the bishop directed to disincumber the church.

**QUARE NON ADMISIT**, is a writ that lies where a man hath recovered an advowson, and sends his clerk to the bishop to be admitted, and the bishop will not receive him; then he shall have the said writ against the bishop, and may recover against him ample satisfaction in damages.

**QUARENTINE**, is a space of forty days: thus where the law says, that a widow shall remain in her husband's capital mansion house for forty days after his death, during which time her dower shall be assigned, these forty days are called the widow's *quarentine*. So where persons coming from infected countries, are obliged to wait forty days before they are permitted to land; this is called performing *quarentine*. 2 *Black.* 135.

*Quarentine,*

*Quarentine*, likewise signifies a quantity of ground containing forty perches. *Leg. Hen. 1. c. 16.*

**QUARTER SESSION**, is a general court holden by the justices of the peace in every county or other district, having liberty to hold sessions, once in every quarter of the year, at certain times limited by statute, for the execution of the authority given them by the commission of the peace, and by divers acts of parliament. If such general court is holden at other times than the particular times so limited, it is then called a *general sessions*; if for the execution of some particular branch only of their office, it is then a *special sessions*.

The particular time in every quarter of the year, is as follows, *viz.* in the first week after the *Epiphany*, in the first week after the clause of *Easter*, in the first week after the translation of St. *Thomas* the Martyr, and in the first week after the feast of St. *Michael*. If any of the said feast days falleth on a *Sunday*, the sessions shall be holden in the week following, and not in that same week. *2 H. 5. st. 1. c. 4. 2 H. Hist. 49.*

**QUEEN ANNE'S BOUNTY.** See **FIRST FRUITS.**

**QUE ESTATE**, *quorum statum*, as much as to say, *whose estate* he hath; which is a plea where a man, intitling another to lands, saith, that he and they *whose estate he hath* have enjoyed the same. A man cannot prescribe in any thing by a *que estate* that lies in grant, and cannot pass without deed or fine; but *in him and his ancestors* he may, because he comes in by descent without any conveyance. *1 Inst. 121.*

So in the case of an advowson appendant to a manor, he may prescribe that he and they whose estate he hath in the manor, have used to hold the same; but if it be an advowson in gross, or a distinct inheritance, and not appendant, then he can only prescribe in him and his ancestors. *2 Black. 266.*

**QUINTO EXACTUS**, is one that hath been five times proclaimed in the county court, in order to outlawry; and if he doth not then appear, he is by the judgment of the coroners returned outlawed.

**QUI TAM**, is when an information is exhibited against any person on a penal statute at the suit of the king and the party who is informer, where the penalty for breach of the statute is to be divided between them; and such process is called a *qui tam*, from those words in the declaration respecting the prosecutor, when the proceedings were in Latin, "*qui tam pro domino rege quam pro seipso prosequitur*."

**QUIT CLAIM**, *quieta clamatio*, is the quitting, releasing, or giving up all claim or title.

**QUIT RENTS**, *quieti redditus*, are so called because the tenant thereby goes *quit* and free of all other services. When these payments were reserved in silver or white money, they were anciently called *white rents*, or *blanch farms*, *redditus albi*; in contradistinction to rents reserved in work, grain, or the like; which were called *redditus nigri*, or *black malle*, 2 *Black*, 42.

**QUOD CUM**, in indictments or the like, being only by way of recital, (*that whereas* such a one being so and so,) and not a positive charge, is insufficient. 2 *Haw*, 227.

**QUOD EI DEFORCEAT**. Anciently if the owners of a particular estate, as for life, in dower, by the curtesy, or in fee tail, were barred of the right of possession by a recovery had against them, through their default or non-appearance in a possessory action, they were absolutely without any remedy by the common law; as a writ of right doth not lie for any, but such as claim to be tenants of the fee simple. Therefore, the statute of the 13 *Ed*. 1. c. 4. gives a new writ for such persons, after their lands have been so recovered against them by default, called a *quod ei deforceat*; which, though not strictly a writ of right, so far partakes of the nature of one, as that it will restore the right to him, who has been thus unwarily deforced by his own default. 3 *Black*. 193.

**QUOD PERMITTAT**, is a writ that lies for one that is disseised of his common of pasture; so of a turbary, piscary, fair, market, and the like. The heir of the person disseised may have this writ against the heir of the disseisor: so a parson may have a *quod permittat* against a disseisor in the time of his predecessor. *T. L.*

QUOD

**QUOD PERMITTAT PROSTERNERE**, is a writ commanding the defendant to permit the plaintiff to abate the nuisance complained of, (*quod permittat prosternere*,) or otherwise to appear in court, and shew cause why he will not. On this writ the plaintiff shall have judgment to abate the nuisance, and to recover damages: but the proceedings on this writ being tedious and expensive, it is now disused, and hath given way to a special action on the case.

**QUO MINUS**, is a writ in the exchequer, wherein the plaintiff suggests that he is the king's farmer or debtor, and that the defendant hath done him the injury complained of, *quo minus sufficiens existit*, by which he is the less able to pay to the king his debt or rent. This writ was formerly allowed only to such persons as were real tenants or debtors to the king; but now the practice is become general, for the plaintiff to surmise that he is the king's debtor, although he is no way indebted to him, and the words are mere matter of form, and the truth thereof never inquired into, but the form is retained to give jurisdiction to the court of exchequer.

**QUO WARRANTO**, is in nature of a writ of right for the king, against him who claims or usurps any office, franchise, or liberty, to inquire by what authority he supports his claim, in order to determine the right: it lies also in case of non-user, or long neglect of a franchise, or misuser, or abuse of it; being a writ commanding the defendant to shew by *what warrant* he exerciseth such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse.  
3 Black. 262.

This was originally returnable before the king's justices at *Westminster*, but afterwards only before the justices in eyre, by virtue of the statutes of *quo warranto*, 6 Ed. 1. c. 1. and 18 Ed. 1. st. 2.; but since those justices have given place to the king's temporary commissioners of assize, (the judges on the several circuits,) this branch of the statutes hath lost its effect; and writs of *quo warranto* (if brought at all) must now be prosecuted and determined before the king's justices at *Westminster*: and in case of judgment for the defendant, he shall have an allowance of his franchise; but in case of judgment for the king, for that the party is intitled to no such franchise, or hath disused or abused it, the franchise is either seized into the king's hands, to be granted out again to whom-



whomever he shall please ; or, if it be not such a franchise as may subsist in the hands of the crown, there is merely judgment of ouster, to turn out the party who usurped it. *Id.*

The judgment on a writ of *quo warranto* (being in the nature of a writ of right) is final and conclusive, even against the crown; which, together with the length of its process, probably occasioned that disuse into which it is now fallen, and introduced a more modern method of prosecution, by *information* filed in the court of king's bench, by the attorney general, *in the nature of a writ of quo warranto*, wherein the process is speedier, and the judgment not quite so decisive against the crown. This is properly a criminal method of prosecution, as well to punish the usurper by a fine for the usurpation of the franchise, as to oust him, or seize it for the crown ; but hath long been applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor ; the fine being nominal only. 3 *Black.* 263.

This proceeding, by virtue of the statute 9 *An. c.* 20. is now applied to the decision of corporation suits, between party and party, without any intervention of the prerogative, which permits an *information in nature of a quo warranto* to be brought, with leave of the court, at the relation of any person desiring to prosecute the same, (who is called the *relator*,) against any person usurping, intruding into, or unlawfully holding any franchise or office in any city, borough, or town corporate ; provides for its speedy determination, and directs that, if the defendant be convicted, judgment of ouster (as well as a fine) may be given against him, and that the relator shall pay or receive costs, according to the event of the suit. 3 *Black.* 264.

## R A C

**R**ACK, an engine to extort confession from persons accused, which is in use at this day in countries governed by the civil law : but the trial of guilt or innocence, by this method, is utterly unknown to the laws of *England* ; though once, when the dukes of *Exeter* and *Suffolk*, and other ministers of *Hen. 6.* had laid a design to introduce the civil law into this kingdom, as the rule of government, for a be-

ginning thereof, they erected a rack for torture, which was called in derision, the duke of *Exeter's* daughter, and still remains in the tower of *London*, where it was occasionally used as an engine of state, more than once, in the reign of queen *Elizabeth*. But when upon the assassination of *Villiers*, duke of *Buckingham*, by *Felton*, it was proposed in the privy council to put the assassin to the rack, in order to discover his accomplices; the judges, being consulted, declared unanimously, that no such proceeding was allowable by the laws of *England*. 4 *Black*. 326.

**RACK RENT**, is the full extended yearly value of a tenement let to farm.

**RANSOM**, *redemptio*, is properly the sum paid for redeeming a captive or prisoner of war. Sometimes, in our law, it is taken for a sum of money paid for pardoning some great offence, and setting the offender at liberty, who was under imprisonment.

When a statute saith, that such a person shall pay fine and ransom to the king, in legal understanding such fine and ransom are all one; for if they were divers, then should the party pay two sums, one for the fine, another for the ransom, which was never done. 1 *Inst*. 127.

If a ship was taken by the enemy, and ransomed, the ransom money must be raised out of the profits, notwithstanding any former mortgage of the ship; for if the ship had not been redeemed, the whole mortgage money must have been lost; and insurers always pay a part of the ransom money. 2 *Eq. Abr*. 690.

**RAPE OF WOMEN**, is where a man hath carnal knowledge of a woman by force, and against her will. Also if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, whether with her consent or against it, he shall be punished as for a rape. And it is not a sufficient excuse in the ravisher, to prove that the woman is a common strumpet; for she is still under the protection of the law, and may not be forced. Nor is it any excuse, that she consented after the fact. 1 *Harw*. 108.

The party ravished may give evidence on oath, and is in law a competent witness; but the credibility of her testimony,

mony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony; as if the witness be of good fame; if she presently discovered the offence, and made pursuit after the offender; shewed circumstances and signs of the injury, whereof many are of that nature, that only women are the most proper examiners and inspectors; if the place wherein the fact was done, was remote from inhabitants or passengers; if the offender fled for it; these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. But, on the other side, if she concealed the injury for any considerable time after she had opportunity to complain; if the place where the fact was supposed to be committed was near to inhabitants, or common recourse of passengers, and she made no outcry where it is probable she might be heard by others; or if a man prove himself to be in another place, or in other company at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to be done in a place where it was impossible the man could have access to her at that time; as if the room was locked up, and the key in the custody of another person; these, and the like circumstances, carry a strong presumption that her testimony is false or feigned. 1 *H. H.* 633.

Of old time rape was felony, for which the offender was to suffer death; afterwards the offence was made lesser, and the punishment changed from death to the loss of those members whereby he offended; that is, it was changed to castration, and loss of his eyes, unless she that was ravished, before judgment, demanded him for her husband. Afterwards, by the statute 3 *Ed. 1. c. 13.* it was made a trespass, subjecting the offender to two years imprisonment, and a fine at the king's will. By 13 *Ed. 1. c. 34.* it was again made felony; and at last, by 18 *El. c. 7.* was excluded from the benefit of clergy. 2 *Inst.* 180.

**RASURE**, from *rado*, to shave, is where part of the writing is scraped or scratched out, and where a deed is altered in any material part by the plaintiff himself, or by a stranger without the privity of the obligee, be it either by rasure, interlineation, or addition, or by drawing the pen through a line, or through the middle of any word material,

this will vacate the deed, unless a memorandum be made thereof at the time of the execution and attestation. And if the obligee himself alter the deed after the execution thereof, although it be in words not material, yet this shall vacate the deed: but if a stranger, without his privity, alter the deed in any point not material, this shall not vacate the deed. 11 Co. 27.

If a deed contain divers distinct and absolute covenants, if any of the covenants be altered by rasure, addition, or interlineation, this misfeazance *ex post facto* shall vacate the whole deed; for though they be several covenants, yet it is but one deed. *Id.* 28.

**RATIONABILI PARTE BONORUM**, is a writ that lieth where the wife or sons and daughters of the deceased cannot have their reasonable part of the deceased's goods, after the debts are paid, and funeral expences satisfied. *F. N. B.* Of which goods the children, if there were any, should have one part; and the wife, if she survived, another part; if only a wife, or only children, they should respectively in either case take one moiety, and the administrator the other. *Bracton.* 60.

**RAVISHMENT.** See **RAPE.**

**RAVISHMENT OF WARD**, was a writ that lay for the guardian by knight's service, or in socage, against a person who took from him the body of his ward. By the statute 12 C. 2. c. 24. this writ is taken away as to lands held by knight's service, but not where there is guardian in socage, or appointed by will. But the proceedings by this kind of writ are now antiquated, and the most usual method of redressing all complaints relative to wards and guardians, is by application to the court of chancery, which is the supreme guardian, and has the superintendent jurisdiction of all the infants in the kingdom. 3 *Black.* 141.

**REAL ACTIONS**, are those which concern the realty only, being such whereby the plaintiff (who in this case is called the demandant) claims title to have any lands or tenements, rents, commons, or other hereditaments, in fee simple, fee tail, or for term of life. By these actions formerly all disputes concerning real estates were decided; but they



they are now mostly laid aside in practice, upon account of the great nicety required in their management, and the inconvenient length of their process, a much more expeditious method of trying titles being since introduced by other actions personal and mixed. 3 *Black.* 117.

**REALTY**, relates to *real* property, as lands and tenements, in contradistinction to *personalty*, which concerns things belonging to a man's person. A *real action*, is that whereby the plaintiff claims title to lands, tenements, rents, commons, or other hereditaments; a *personal action* is such whereby a man claims a debt, or personal duty, or damages in lieu thereof. 3 *Black.* 117.

**REASONABLE PART**, was the portion of goods of a person deceased, which, by our ancient law, belonged to his wife and children; which the owner could not bequeath by will, nor the ordinary dispose of in case of intestacy. For which, see *RATIONABILI PARTE BONORUM*.

**REBELLION**, commission of, is when, on disobedience to the several processes of the court of chancery for causing the defendant to appear, the court issues a writ called a *commission of rebellion*, directed to several commissioners therein named, to attach him, wherever he may be found; as a rebel and contemner of the king's laws and government. 3 *Black.* 444.

**REBUTTER**, (from *bouter*, Fr. *repellere*, to put back,) is the answer of the defendant to the plaintiff's *surrejoinder*. But it is seldom that the parties go so far in pleading as to a rebutter.

**RECAPTION**, that is, *retaking*, is when any one hath deprived another of his property in goods or chattels personal, or wrongfully detains one's wife, child, or servant; in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and *retake* them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace; for this right of recaption shall not be exerted, where such exertion must occasion strife and bodily contention, or endanger the peace

peace of society. If, for instance, my horse is taken away, and I find him in a common, a fair, or a public inn, I may lawfully seize him to my own use; but I cannot justify breaking open a private stable, or entering on the grounds of a third person to take him, except he be feloniously stolen; but must have recourse to an action at law. 3 *Black.* 4.

There is also a writ of recaption, which is, where goods have been distrained for rent, or other services, and are again distrained for the same thing, pending the plea in the county court, or before the justices. *F. N. B.*

**RECEIPTS.** By the 23 *G. 3. c. 49.* certain stamp duties are imposed on receipts given on the payment of money, where the sum amounts to 2*l.*, or upwards; subject nevertheless to several exceptions, as set forth in the act, and also in the act of 24 *G. 3. c. 7. sess. 1. s. 6, 7.*

**RECEIVING STOLEN GOODS,** knowing them to be stolen, is a high misdemeanor at the common law, and by several statutes is made felony and transportation, and, in some particular instances, felony without benefit of clergy.

**RECITAL,** in a deed, is the setting forth such considerations and matters of fact as are necessary to explain the reasons upon which the transaction is founded. 2 *Black.* 298.

So in the assignment of leases and mortgages, it is usual to recite part of the ancient or former deeds in the premises. *Wood. b. 2. c. 3.*

Yet a recital is not conclusive, because it is not a direct affirmation. 1 *Inst.* 352.

**RECOGNIZANCE,** is an obligation of record, which a man enters into before some court of record, or magistrate duly authorised, with condition to do some particular act; as to appear at the assizes or quarter sessions, to keep the peace, to pay a debt, or the like. It is in most respects like another bond, the difference being chiefly this, the bond is the creation of a fresh debt, or obligation *de novo*; the recognizance is an acknowledgement of a former debt upon record; the form whereof is, "that *A. B.* doth acknowledge to owe to our sovereign lord the king, (to the plaintiff, to *C. D.*, or the like,) the sum of ten pounds," with condition to

to be void on performance of the thing stipulated: in which case the king, the plaintiff, C. D., or the like, is called the cognizee, "is *cui cognoscitur*;" as he that enters into the recognizance is called the cognizor, "is *qui cognoscit*." This being either certified to, or taken by the officer of some court, is witnessed only by the record of that court, and not by the party's seal; so that it is not in strict propriety a deed, though the effects of it are greater than of a common obligation; being allowed a priority in point of payment, and binding the lands of the cognizor from the time of inrollment on record. There are also other recognizances of a private kind, in nature of a *statute staple*, by virtue of the statute 23 H. 8. c. 6. which also are a charge upon real property. 2 Black. 341.

RECORD, is a memorial or remembrance in rolls of parchment of the proceedings and acts of a court of justice, which hath power to hold plea, according to the course of the common law, of real or mixed actions, or of actions *quare vi et armis*, or of personal actions, whereof the debt or damage amounts to 40s. or above, which are called courts of record, and are created by act of parliament, letters patent, or prescription. 1 Inst. 260.

It is derived of *recordari*, to keep in remembrance; but in legal acceptation, records are restrained to the rolls of such courts only as are courts of record, and not the rolls of inferior or any other courts which proceed not according to the law and custom of *England*. And the rolls being the records or memorials of the judges of the courts of record, import in them such uncontrollable credit, as they admit no averment, plea, or proof to the contrary. And if such a record be alleged, and it be pleaded that there is no such record, it shall be tried only by itself: the reason whereof is apparent, for otherwise there would never be any end of controversies. *Id.*

During the term wherein any judicial act is done, the record remaineth in the breast of the judges of the court, and therefore the roll is alterable during that term as the judges shall direct; but when the term is past, then the record is in the roll, and admits no alteration, averment, or proof to the contrary. *Id.*

Every court of record is the king's court; wherein if the judges do err, a writ of error lieth. But the county court, the hundred court, the court baron, and such like, are no courts

courts of record, and therefore the proceedings therein may be denied and tried by jury, and upon their judgments a writ of error lieth not, but a writ of false judgment; for that they are no courts of record, because they cannot hold plea of debt or trespass, if the debt or damage do amount to 40s.; or of any trespass *vi et armis*. 1 *Inst.* 117.

A *debt* of record is a sum of money, which appears to be due by the evidence of a court of record: thus, when any specific sum is adjudged to be due to the plaintiff from the defendant, on an action or suit at law, this is a contract of the highest nature, being established by the sentence of a court of judicature. Recognizances also, and statutes merchant and of the staple, if forfeited by non-performance of the condition, are ranked among debts of record; because the contract, on which they are founded, is witnessed by the highest kind of evidence; namely, by matter of record. 2 *Black.* 405.

RECORDARE, is a writ commanding the sheriff to make a *record* of the proceedings in the county court, by writ or without writ; and to send the record up to the king's bench or common pleas: it is in the nature of a certiorari. The plaintiff may remove the plaint in the county court without cause shewed; but the defendant cannot remove it without cause expressed in the writ, as upon a plea of freehold, or the like. But if the plaint is in another court, neither the plaintiff nor defendant can remove it without cause shewed. 2 *Inst.* 339.

### RECOVERY:

1. *Recovery, what.*
2. *Who may suffer a recovery.*
3. *Of what things.*
4. *Manner of suffering a recovery.*
5. *Effect of a recovery suffered.*

#### 1. *Recovery, what.*

COMMON recoveries were invented by the ecclesiastics to elude the statutes of mortmain; and afterwards encouraged by the finesse of the courts of law, in order to put an end to all fettered inheritances, and bar not only all estates tail,



but also all remainders and reversions expectant thereon. *Black. b. 2. c. 21. f. 4.*

A common recovery is so far like a fine, that it is a suit or action, either actual or fictitious; and in it the lands are recovered against the tenant of the freehold; which recovery, by a supposed adjudication of the right, binds all persons, and vests a free and absolute fee simple in the recoveror. *Id.*

And a common recovery is now looked upon as the best assurance, except an act of parliament, that purchasers can have.

There must be three persons at least to make a common recovery; a recoveror, a recoveree, and a vouchee. The recoveror is the plaintiff or demandant, that brings the writ of entry. The recoveree is the defendant or tenant of the land, against whom the writ is brought. The vouchee is he whom the defendant or tenant voucheth or calls (*vocat*) to warranty of the land in demand, either to defend the right, or to yield him other lands in value, according to a supposed agreement. *Wood. b. 2. c. 3.*

And this being by consent and permission of the parties, it is therefore said that a recovery is *suffered*.

## 2. Who may suffer a recovery.

TENANT *for years* cannot suffer a recovery, for he is not tenant of the freehold. *Wood. ibid.*

And by the 14 *Eliz. c. 8.* no tenant *for life*, of any sort, can suffer a recovery, so as to bind them in remainder or reversion.

But if he, or the tenant to the *præcipe*, (that is, the recoveree, so called from those words in the writ, when the proceedings were in Latin, *præcipe quod reddat*,) vouches the remainder man, and he appears and vouches the common vouchee, it is good. *Blackst. b. 2. c. 21. f. 4.*

It is now fully settled, that a tenant *in tail* may, if he pleases, either turn his estate tail into a fee, or alienate it for his own benefit, by duly suffering a common recovery. But he must have a sufficient estate and power to qualify him to suffer such recovery: he must either be tenant in tail *in possession*, or he must have a concurrence of the tenant *for life*; by which tenant *for life* is meant, not the lessee of the land under a beneficial lease, but the original tenant *for life* claiming

ing under the family settlement, and having a life estate settled upon him, prior (in order of succession) to the other's remainder in tail. *Burr. Mansf.* 1072.

By the 11 H. 7. c. 20. no woman, after her husband's death, shall suffer a recovery of lands, settled on her in tail by way of jointure, by her husband or any of his ancestors.

A mortgagee cannot suffer a recovery, so as to bar the mortgagor of the equity of redemption.

If tenant in tail makes a mortgage or a lease for years, or charges the land with any other incumbrance, and afterwards suffers a recovery, this lets in all the incumbrances. 1 *Will.* 276.

### 3. Of what things.

A COMMON recovery may be had of such things, for the most part, as pass by a fine. An use may be raised upon a recovery, as well as upon a fine; and the same rules are generally to be observed and followed for the guiding and directing the uses of a recovery, as are observed for the guidance and direction of a fine. *West. Symb. sect. 2, 3.* 1 *Co.* 15.

If lands are *copyhold*, a common recovery, suffered in the common pleas, will not pass such lands; but if lands are customary freeholds, and pass by surrender in a borough court, a recovery in the common pleas of such lands may be good. 1 *Atk.* 474.

### 4. Manner of suffering a recovery.

IN order to suffer a common recovery, the tenant of the freehold agrees with the demandant (some friend) that he, the demandant, shall bring his action real against the said tenant, as though he, the demandant, had goodright to the land, and the tenant no right of entry to the same; but after a disseisin which a stranger (commonly one *Hugh Hunt*) had unjustly made, whereas indeed the demandant never had possession thereof, nor the stranger. The tenant, appearing to the writ, vouches or calls to warranty some person (commonly the crier of the court, who thereupon is styled the *common vouchee*) who is supposed to warrant the title. This vouchee appears, as though he would defend the title: whereupon the demandant desires leave of the court to im-

parl, or confer with the vouchee in private; which is allowed him. And soon afterwards, the demandant returns to court, but the vouchee disappears, or makes default: whereupon judgment is given for the demandant to recover the land against the defendant or tenant in tail, and he to recover in value against the common vouchee. But this recovery in value is only imaginary; and the lands are now absolutely vested in the said recoveror by judgment of law, and seisin thereof is delivered by the sheriff of the county; so that this collusive recovery operates merely in the nature of a conveyance in fee simple, and is taken for a bar of the tail for ever. *Wood. b. 2. c. 3.*

A recovery is either with a *single* voucher, (as above,) or with a *double* voucher; that is, where the tenant voucheth one, who voucheth over the common vouchee: and this is the most common, and the safest way. Also, there may be more vouchees, or more vouchers over, where three or more are vouched; but the last is always the common vouchee. *Id.*

The common recovery with *single* voucher is, to bar the tenant in tail and his heirs of such estate tail which is in his *possession*, (not where he is put to a writ of right,) with the remainder dependant upon the same, and the reversion expectant, which others have; and of all leases and incumbrances, derived out of such remainder or reversion. The common recovery with *double* voucher is, to bar the first voucher and his heirs of every such estate as *at any time was in him or any of his ancestors*, whose heir he is of such estate; and all others, of such right to remainder or reversion, as was at any time dependent or expectant upon the same; and of all leases and incumbrances derived out of them: and it will also be a bar of such estate, whereof the tenant was then seised in reversion or remainder, expectant or dependent upon the same. *Id.*

In a recovery with *single* voucher, the *præcipe* or writ of entry must be brought against the tenant in tail in possession, and he to vouch the common vouchee. But in a recovery with *double* voucher, a tenant of the freehold must be made by fine or deed, who is commonly called the tenant to the *præcipe*, and the writ must be brought against him, and he to vouch the tenant in tail, and he the common vouchee, who pleads, and after makes default; and then judgment is given for the demandant against the tenant to the *præcipe*, and he to recover

recover in value against the first vouchee, and he again to recover in value against the second or common vouchee. *Id.*

5. *Effect of a recovery suffered.*

THE effect of a common recovery is, that it is an absolute bar, not only of all estates tail, but of remainders and reversions, expectant on the determination of such estates. So that a tenant in tail may, by this method of assurance, convey the lands held in tail to the recoveror, his heirs and assigns, absolutely free and discharged of all conditions and limitations in tail, and of all remainders and reversions. *Black, b. 2. c. 21. f. 4.*

But *strangers* are not barred by a recovery, or by non-claim, as in a fine; but only parties or privies to the estate in possession, remainder, or reversion. *3 Co. 5.*

If tenant in tail, by marriage settlement or otherwise, on the part of the mother, with reversion in fee in himself, on the part of the mother also, suffers a recovery to the use of himself in fee, this destroys the title by descent on the part of the mother, and gains him an absolute fee, descendible to his heirs general, and not to the heirs on the part of his mother. *Str. 1179.*

A *feme covert*, with her husband, is bound by a recovery; but, as in a fine, she ought to be examined. *Wood. b. 2. c. 3.* And by a rule of court, an affidavit thereof made and annexed to the warrant of attorney.

A widow of the tenant to the *præcipe* in a recovery is not intitled to dower, forasmuch as he is only a mere instrument for the purpose of form only. *Bur. Mansf. 117.*

By the 34 & 35 H. 8. c. 20. no recovery had against tenant in tail of the *king's gift*, (the remainder or reversion being in the *king*,) shall be barred by a common recovery; nor the remainder or reversion, which is at the time of the recovery in the king.

By the 21 H. 8. c. 15. a *lessee for years* shall not be ousted by a recovery, but shall enjoy his term against the recoveror, according to his lease.

If a recovery be suffered without any good consideration, and without any uses declared, this, like other conveyances, enures only to the use of him who suffers it. And if any consideration appears, yet as a common recovery conveys an



absolute estate, without any limitations, to the recoveror, this assurance could not be made to answer the purposes of family settlement, unless directed by other more complicated deeds, wherein particular uses can be more particularly expressed. If such deed is made previous to the recovery, it is called a deed to *lead* the uses of the recovery; if subsequent, it is called a deed to *declare* the uses. *Black. b. 2. c. 7.*

**RECREANT**, cowardly, faint-hearted. A term used in the ancient trial by battel, when one of the combatants yielded the contest; in which case, he from thenceforth became infamous, and lost his *liberam legem*, so as never to be put upon a jury, nor admitted as a witness in any cause. 3 *Black. 340.*

**RECTOR**, *governor*, is he that hath that part of the revenues of a church, which heretofore was appropriated to some of the monasteries; as a *vicar* hath the other part, which was set out for the maintenance of him that was to supply the cure; or if the church was never appropriate, nor had any vicar, then the rector, as sole incumbent, hath the whole revenues.

**RECUSANT**, is one who refuseth to go to church, and worship God after the manner of the church of England; a *popish* recusant, is a papist who so refuseth; and a *popish recusant convict*, is a papist legally convicted thereof. See **PAPISTS**.

**REDDENDUM**, is a clause in a deed, whereby the grantor doth create or reserve some new thing to himself out of what he had before granted; as, "rendering therefore yearly, the sum of 10s. or a pepper corn, or two days "plowing," or the like. Under the pure feudal system, this render, *redditus*, or rent, consisted in chivalry, principally of military services; in villenage, of the most slavish offices; and in socage, it usually consists of money, though it may consist of services still, or of any other certain profit. To make a *reddendum* good, if it be of any thing newly created by the deed, the reservation must be to the grantor, and not to any stranger to the deed. But if it be of ancient services, or the like, annexed to the land, then the reservation may be to the lord of the fee. 2 *Black. 299.*

RE-

**RE-ENTRY**, is the resuming or retaking a possession lately had : as if a man makes a lease of lands to another, he thereby quits the possession ; and if he covenants with the lessee, that for non-payment of rent at the day, it shall be lawful for him to re-enter ; this is as much as if he conditioned to take again the land into his own hands, and to recover the possession by his own act, without the assistance of the law. But words in a deed give no re-entry if a *clause* of re-entry be not added. *Wood's Inst.* 140.

In a feoffment, lease, &c. one may reserve a rent on condition, that if the rent is behind he shall re-enter, and hold the lands till he is satisfied or paid the rent in arrear ; and in this case, if the rent is behind, he may re-enter ; though when the feoffee, &c. pays or tenders on the land all the arrears, he may enter again. *Lit.* 327. And the feoffor, &c. by his re-entry, gaineth no estate of freehold, but an interest, by the agreement of the parties, to take the profits in the nature of a distress. Here the profits shall not go in part of satisfaction of the rent ; but it is otherwise, if the feoffor was to hold the land till he was paid by the profits thereof. *Id.*

All persons who would re-enter on their tenants for non-payment of rent, are to make a demand of the rent ; and to prevent the re-entry, tenants are to tender their rent. *1 Inst.* 201.

If there is a lease for years, rendering rent, with condition, that if the lessee assigns his term the lessor may re-enter ; and the lessee assigneth, and the lessor receiveth the rent of the assignee, not knowing or hearing of the assignment, he may re-enter, notwithstanding the acceptance of the rent. *3 Rep.* 65, *Gro. El.* 553.

**REFUSAL**, of an *executorship*, is where one that is named executor in a will declines the acceptance of that office ; in which case, the refusal must not be by word only, but must be entered and recorded in court. But if he hath already meddled with the goods, he cannot afterwards refuse. *Savinb.* 384.

*Refusal*, of a clerk presented to a *benefice*, is when the bishop on a presentation will not admit him ; as if he be an heretic, excommunicate, outlawed, under age, or of evil life and conversation. In which case, if the refusal is for any matter of ecclesiastical cognizance, the ordinary is to give notice to the patron, because the patron, being usually a layman,

man, is not supposed to have knowledge of it, else the bishop cannot collate by lapse; but if the cause be temporal, the bishop is not bound to give notice. If an action at law is brought by the patron against the bishop for refusing his clerk, the bishop must assign the cause; and if the cause be of a temporal nature, and the fact admitted, (as for instance, outlawry,) the judges of the king's courts must determine its validity; but if the fact be denied, it must be determined by a jury. If the cause be of a spiritual nature, (as *heresy*, particularly alleged,) the fact, if denied, shall also be determined by a jury; and if the fact be admitted or found, the court, upon consultation and advice of learned divines, shall decide its sufficiency. If the cause be want of learning, the bishop need not specify in what points the clerk is deficient, but the court shall write to the metropolitan to re-examine him, and certify his qualification; which certificate of the archbishop is final. 1 *Black.* 389.

REGARD (court of) is a forest court to be holden every third year, for the lawing or expeditation of mastiffs; which is done by cutting off the claws of the forefeet, to prevent them from running after deer. No other dogs but mastiffs were permitted to be kept within the king's forest; it being supposed that the keeping of these, and these only, was necessary for the defence of a man's house. 3 *Black.* 72.

REGARDANT, is a word relating to the state of villenage. For there is a *villein regardant*, and a *villein in gross*. A *villein regardant*, is where a man is seised of a manor, unto which there is a villein annexed; such villein is called *regardant*, because he has the charge to do all the base and inferior services; and his service is not certain, but he must have *regard* to that which he is commanded unto. A *villein in gross*, is not annexed to any manor, but belongs to the *person* of the lord, and is transferrable by deed from one to another. 1 *Inst.* 120.

REGISTER, is an officer of some court, who hath the custody of the records and archives of that court; and the repository where these records are kept, is called the *registry*.

*Register* is also the name of a *book*, wherein are entered most of the forms of writs original and judicial used at common law, called the *register of writs*; which is one of the

the most ancient and authoritative books of the common law.

In every parish is to be kept a *register book*, wherein the births, marriages, and burials in such parish are to be recorded: and the register of marriages is particularly enforced by the statute 26 G. 2. c. 33. in order to prevent clandestine marriages; the forging or altering of which, or making any false entry therein, is made felony without benefit of clergy.

And by the 23 G. 3. c. 67. a stamp duty is imposed upon the entry of every burial, marriage, birth, or christening in the register of any parish or place. And the same to extend to Quakers [and by the 25 G. 3. c. 75. to all protestant dissenters]. But shall not extend to persons buried from a workhouse, or hospital, or at the sole expence of any charity, nor to the entry of the birth or christening of any child whose parents shall at that time receive any parish relief.

In some of the large counties, as in *Yorkshire* and *Middlesex*, public register offices are erected, wherein memorials of the wills and deeds of lands are to be entered, in order to guard against fraudulent charges and incumbrances.

**REGRATING**, (from *re* again, and the French *grater*, to *grate* or scrape,) signifies the scraping or dressing of cloth or other goods, in order for selling the same again. This offence was described by the statute 5 & 6 Ed. 6. c. 14. to be the buying of corn or other dead victual in any market, or within four miles of the place, and selling the same again in the same market, or in some other within four miles thereof. Which statute being now repealed by the 12 G. 3. c. 71. the same remains an offence at the common law, punishable at the discretion of the court, by fine and imprisonment.

**REHEARING**, in chancery, is when either of the parties thinks himself aggrieved by the decree; in which case, he may petition the lord chancellor for the cause to be heard over again: but a petition for rehearing must be signed by two of the counsel, certifying that they apprehend the cause is proper to be reheard. 3 *Black.* 453.

**REJOINDER**, is the defendant's answer to the plaintiff's replication, and ought to follow and enforce the defendant's



plea; otherwise it is a departure from his plea, which the law will not allow. As if the defendant in his plea to the declaration pleads performance of covenants, and the plaintiff replies, that the defendant did not such an act according to the covenant; and then the defendant *rejoins*, that he offered to do it, and the plaintiff refused it; this is a departure, because the matter is not pursuant, for it is one thing to do a thing, and another to offer to do it; therefore this should have been offered in the plea at first. 1 *Inst.* 304.

RELATION, is where, in consideration of law, two different times or things are accounted as one; and by some act done, the thing subsequent is said to take effect by *relation* from the time preceding: as if one deliver a writing to another, to be delivered to a third person, as the deed of him who made it, when such third person hath paid a sum of money; now when the money is paid, and the writing delivered, this shall be taken as the deed of him who made and delivered it at the time of its first delivery, to which it hath *relation*. And so things relating to a time long before shall be as if they were done at that time. *Terms of the Law*.

This device is most commonly to help acts in law, and make a thing take effect, and shall relate to the same thing, the same intent, and between the same parties only; for it shall never do a wrong, or lay a charge upon a person that is no party. 1 *Co.* 99.

And when the execution of a thing is done, it shall have relation to the thing executory, and makes all but one act or record, although performed at several times. So a judgment had in full term shall have relation to the first day of the term, as if given on that very day, unless there is a memorandum to the contrary; as where there is a continuance till another day in the same term. 3 *Salk.* 212.

Judgment against an heir, on the obligation of his ancestor, shall have relation to the time of the writ first purchased; and from that time it will avoid all alienations made by the heir. *Cro. Car.* 102.

And if one be bail for the defendant, and before judgment he lease his lands, they shall be liable to the bail and judgment by relation. *Poph.* 112. 132.

It was formerly holden, that where the defendant in a suit, after the teste of the *feri facias*, but before the sheriff had executed it, sold the goods, and delivered them to the buyer, the sheriff might take them in execution in the hands of the

buyer; for when such execution was made, it should have relation to the teste of the *feri facias*. 1 *Leon.* 304.

But now by *st. 29 Car. 2. c. 3. f. 16.* writs of execution shall bind the property of the goods only from the time of their delivery to the officer.

Sale of goods of a bankrupt, by commissioners, shall have relation to the first act of bankruptcy, and be good, though the bankrupt sell them afterwards. 1 *Ja. c. 15.*

**RELATOR**, a rehearser or teller: it is also applied to an informer; as by statute 9 *An. c. 20.* which permits an information in nature of a *quo warranto* to be brought with leave of the court against a person intruding into any franchise or office in a corporation; the informant is thereupon styled the *relator*. So where the attorney general files an information *ex officio* in case of the misapplication of a charity, the person applying for the prosecution is called the *relator*.

#### RELEASE:

1. A RELEASE, is a discharge or conveyance of a man's right in lands or tenements to another that hath some former estate in possession. The words generally used are, "remised, released, and for ever quit claimed." 2 *Black.* 324.

When a man hath in himself the possession of lands, he must at the common law convey the freehold by feoffment and livery; but if he hath only a right or a future interest, he may convey that right or interest by a mere release to him that is in possession of the land. *Id.* 325.

2. Release is of two sorts: a release as to lands, goods, and chattels; and a release of actions, whether real, personal, or mixed. *Litt. f. 444.*

3. In releases of all the right which a man hath in certain lands, it behoveth him to whom the release is made, that he hath the freehold in the lands in deed or in law, at the time of the release made; for in every case where he, to whom the release is made, has the freehold in deed or in law, at the time of the release, there the release is good. *Litt. f. 447.*

4. Some actions are *mixed* in the realty, and in the personality; as an action of waste sued against tenant for life, this action is in the realty, because the place wasted shall be recovered; and also in the personality, because damages shall be recovered for the wrongful waste done by the tenant: and therefore, in this action, a release of actions real is a good

good plea in bar, and so is a release of actions personal, *Litt. f. 492.*

5. No right passes by the release, but the right which the releasor had at the time of the release made; if he has no right, the release is void. *Litt. f. 446.*

6. By the release of all actions, causes of action are released; but within a submission of all actions to arbitration, causes of action are not contained. *1 Inst. 285.*

7. By the release of all quarrels, all causes of actions are released, although no action be then depending for the same. *1 Inst. 292.*

8. If a man release to another all manner of demands, this is the best release of all, and the most effectual to bar actions, rights of action, and includes in it most of the others: by this release, all rights and titles to lands, conditions before broken or after, contracts, covenants broken, rents, annuities, debts, duties, obligations, recognizances, statutes, judgments, executions, all manner of actions, real and personal, are barred and discharged. *Litt. f. 508. 1 Inst. 291.*

9. Where two are bound jointly in a bond or obligation, and the obligee releases to one of them, this shall discharge the other. *1 Inst. 232.*

So if two commit a trespass against a man, his release to one of them shall discharge the other; for against joint trespassors there can be but one satisfaction. *Id.*

10. Where there are general words only in a release, they shall be taken most strongly against the releasor; as where a release is made to two persons of all actions, it releases all several actions which the releasor has against them, as well as all joint actions. So if an executor releases all actions, it will extend to all actions that he has in both rights. But where there is a particular recital in a deed, and then general words follow, the general words shall be qualified by the particular recital. *L. Raym. 235.*

But if a release is given on a particular consideration recited, notwithstanding that release concludes with general words, yet the law, in order to prevent surprize, will construe it to relate to the particular matter recited, which was under the contemplation of the parties, and intended to be released. *2 Vez. 310.*

11. The effect of a release is various: sometimes it extinguishes the thing in the possession of the releasee; as rents, commons, and the like. Sometimes it transfers the estate;

as of one jointenant to another. Sometimes it enlarges an estate, being made by a reversioner to the lessee in privity, with apt enlarging words. *Litt. f.* 305, 6. 1 *Inst.* 193.

A release made to tenant in tail, or tenant for life, of the right of the land, shall enure to him that has the remainder or reversion; and so on the contrary. *Litt. f.* 452, 3. 1 *Inst.* 267.

**RELIEF**, was a certain sum of money, that the heir, on coming of age, paid unto the lord, on taking possession of the inheritance of his ancestor; by payment whereof, the heir *relieved* (*relevabat*); that is, as it were, raised up again the lands, after they had fallen into the hands of the superior. And, on payment of the relief, the heir had *livery* of the lands; that is, the lands were to be delivered to the heir; and in case of refusal, the heir might have a writ to recover the same from the lord; which recovery out of the hands of the lord, was called *ouster le main*.

#### REMAINDER :

1. *Of remainders in general.*
2. *Of contingent remainders.*
3. *Of remainders created by will, commonly called executory devises.*

##### 1. *Of remainders in general.*

AN estate in remainder, is an estate limited to take effect and be enjoyed after another estate is determined. As if a man seised in fee simple granteth lands to one for twenty years, and after the determination of the said term, then to another and his heirs for ever; here the former is tenant for years, remainder to the latter in fee. In the first place, an estate for years is created or carved out of the fee, and given to the former, and the residue or remainder of it is given to the latter. But both these interests are in fact only one estate; the present term of years, and the remainder afterwards, when added together, being equal only to one estate in fee. *Black. b.* 2. c. 11. f. 2.

So if lands be granted to one for twenty years, and after the determination of the said term to another for life, and after the determination of the said life estate to a third person, and his heirs for ever; this makes the first person tenant for years,



years, remainder to the second for life, remainder over to third in fee. Now here the estate of inheritance undergoes a division into three portions : the first is an estate for years carved out of it, after that an estate for life, and after that an estate in fee. And here also the first estate, and both the remainders, (for life and in fee,) are one estate only, being nothing but parts or portions of one entire inheritance ; and if there were never so many remainders, it would still be the same thing, upon a principle grounded on mathematical truth, that all the parts are equal, and no more than equal, to the whole. *Id.*

And hence it is easy to collect, that no remainder can be limited after the grant of an estate in fee simple ; because a fee simple is the highest and largest estate that a subject is capable of enjoying ; and he that is tenant in fee, hath in him the whole of the estate ; a remainder therefore, which is only a portion, or residuary part of the estate, cannot be reserved after the whole is disposed of. *Id.*

From hence we may be enabled to comprehend certain rules that have been laid down concerning the creation of remainders. And,

(1.) There must necessarily be some particular estate precedent to the estate in remainder ; as an estate for years to one, remainder to another for life ; or, an estate for life to one, remainder to another in tail. This precedent estate is called the *particular* estate, as being only a small *part* of the inheritance ; the residue or remainder whereof is granted over to another. The necessity of creating this preceding particular estate, in order to make a good remainder, arises from this plain reason ; that the word *remainder* is a relative term, and implies that some part of the thing is previously disposed of ; for where the whole is conveyed at once, there cannot possibly exist a remainder ; but the interest granted, whatever it be, will be an estate in possession. *Id.*

Therefore an estate created to commence at a distant period of time, without any intervening estate, is properly no remainder : it is the whole of the gift, and not a residuary part. And such future estates can only be made of chattel interests, which were considered in the light of mere contracts by the ancient law, to be executed either now or hereafter, as the contracting parties should agree ; but an estate of freehold must be created to commence immediately. For it is an ancient rule of the common law, that no estate of freehold can be created to commence *in futuro* ; but it ought  
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to take effect presently either in possession or remainder; because at common law, no freehold in lands can pass without livery of seisin; which must operate either immediately, or not at all. It would therefore be contradictory, if an estate, which is not to commence till hereafter, could be granted by a conveyance, which imports an immediate possession. *Id.*

So that where it is intended to grant an estate of freehold, whereof the enjoyment shall be deferred till a future time, it is necessary to create a previous particular estate, which may subsist till that period of time is completed; and for the grantor to deliver immediate possession of the land to the tenant of this particular estate, which is construed to be giving possession to him in remainder, since his estate, and that of the particular tenant, are one and the same estate in law: as where a man grants to one a lease of an estate for years, remainder to another in fee, and makes livery of seisin to the lessee; here, by the livery, the freehold is immediately created, and vested in the remainder man, during the continuance of the lessee's term of years. The whole estate passes at once from the grantor to the grantees, and the remainder man is seised of his remainder at the same time that the termor is possessed of his term; the enjoyment of it must indeed be deferred till hereafter; but it is, to all intents and purposes, an estate commencing *in presenti*, though to be occupied and enjoyed *in futuro*. *Id.*

And as no remainder can be created without such a precedent particular estate, therefore the particular estate is said to *support* the remainder. But a *lease at will* is not held to be such a particular estate as will support a remainder over; for an estate at will is of a nature so slender and precarious, that it is not looked upon as a portion of the inheritance; and a portion must be first taken out of it in order to constitute a remainder. *Id.*

(2.) A second rule to be observed is this: that the remainder must commence, or *pass out of the grantor*, at the time of the creation of the particular estate; as where there is an estate to one for life, with remainder to another in fee, here the remainder in fee passes from the grantor at the same time that seisin is delivered of the life estate in possession: and it is this which induces the necessity at common law of livery of seisin being made on the particular estate, whenever a freehold remainder is created; for if it  
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be limited even on an estate for years, it is necessary that the lessee for years should have livery of seisin, not thereby to strengthen his estate, but in order to convey the freehold from, and out of the grantor; otherwise the remainder is void. *Id.*

(3.) A third rule respecting remainders is this: that the remainder must *vest in the grantee* during the continuance of the particular estate, or at the very instant when it determines: as if one be tenant for life, remainder to another in fee tail; here the remainder is vested at the creation of the particular estate for life: or if two be tenants for their joint lives, remainder to the survivor in fee; here, though during their joint lives the remainder is vested in neither, yet on the death of either of them, the remainder vests instantly in the survivor; therefore both these are good remainders. But if an estate be limited to one for life, remainder to the eldest son of another in tail, and the tenant for life dies before the other hath a son; here the remainder will be void; and even supposing he should afterwards have a son, he shall not take by this remainder; for as it did not vest before, or at the end of the particular estate, it never can vest at all: and this depends upon the principle before laid down, that the precedent particular estate, and the remainder, are one estate in law; they must therefore subsist at one and the same instant of time, either during the continuance of the first estate, or at the very instant when that determines, so that no other estate can possibly come between them. *Id.*

## 2. Of contingent remainders.

ON consideration of the premises, arises the doctrine of CONTINGENT remainders; for remainders are either *vested* or *contingent*. *Vested* remainders, (or remainders *executed*, whereby a present interest passes to the party, though to be enjoyed *in futuro*,) are, where the estate is invariably fixed to remain to a determinate person after the particular estate is spent; as if one be tenant for twenty years, remainder to another in fee, this is a *vested* remainder, which nothing can defeat or set aside. 2 *Black. b. 2. c. 11. s. 2.*

*Contingent* or *executory* remainders, (whereby no present interest passes,) are where the estate in remainder is limited to take effect, either to a dubious and uncertain person, or upon

a dubious and uncertain *event*; so that the particular estate may chance to be determined, and the remainder never take effect. *Id.*

First, they may be limited to a dubious and uncertain *person*: as if one be tenant for life, with remainder to the eldest son (then unborn) of another in tail; this is a contingent remainder, for it is uncertain whether he will have a son or no; but the instant that a son is born, the remainder is no longer contingent, but vested; though if the tenant for life had died before the contingency happened, that is, before the son was born, the remainder would have been gone, except in the case of a posthumous child; which by the 10 & 11 *W. c.* 16. may take in remainder as if born in the father's life-time. *Id.*

This species of contingent remainders, to a person not in being, must, however, be limited to some one that may by common possibility exist at or before the time that the particular estate determines: as if an estate be made to *A.* for life, remainder to the heirs of *B.*; now, if *A.* dies before *B.*, the remainder is at an end; for *B.* cannot have an heir whilst he is living; but if *B.* dies first, the remainder then immediately vests in his heir, who will be intitled to the land on the death of *A.* This is a good contingent remainder; for the possibility of *B.*'s dying before *A.* is a common possibility; but a remainder to the right heirs of *B.*, if there be no such person as *B.* at that time, is void: for here, two contingencies must happen; first, that such a person as *B.* shall be born; and, secondly, that he shall also die during the continuance of the particular estate; which makes it a remote and very improbable possibility. *Id.*

A remainder may be also contingent where the person to whom it is limited is fixed and certain; but the *event* upon which it is to take effect is vague and uncertain: as where land is given to *A.* for life, and in case *B.* survives him, then with remainder to *B.* in fee; here *B.* is a certain person, but the remainder to him is a contingent remainder, depending upon a dubious *event*, the uncertainty of his surviving *A.*: during the joint lives of *A.* and *B.* it is contingent; and if *B.* dies first, it never can vest in his heirs, but is gone for ever; but if *A.* dies first, the remainder to *B.* becomes vested. *Id.*

Contingent remainders of either kind, if they amount to a freehold, cannot be limited on an estate *for years*, or any  
 VOL. II. U other



other particular estate less than a freehold. For unless the freehold passes out of the grantor at the time when the remainder is created, such freehold remainder is void: it cannot pass out of him without vesting somewhere; and in case of a contingent remainder, it must vest in the particular tenant, else it can vest nowhere. *Id.*

Contingent remainders may be *defeated* by destroying or determining the particular estate upon which they depend, before the contingency happens whereby they become vested. Therefore where there is tenant for life, with divers remainders in contingency, he may, not only by his death, but by alienation, surrender, or otherwise destroy and determine his own life estate, before any of those remainders vest; the consequence of which is, that he utterly defeats them all; as if there be tenant for life, with remainder to his eldest son unborn in tail; and the tenant for life, before any son is born, surrenders his life estate, he by that means defeats the remainder in tail to his son; for his son not being *in esse* when the particular estate determined, the remainder could not then vest; and as it could not vest then, it never can vest at all. In these cases, therefore, it is necessary to have TRUSTEES appointed to preserve the contingent remainders; in whom there is vested an estate in remainder for the life of the tenant for life, to commence when his determines. If therefore his estate for life determines otherwise than by his death, their estate, for the residue of his natural life, will then take effect, and become a particular estate in possession, sufficient to support the remainders depending in contingency. *Id.*

For though contingent remainders by law must vest during, or at the instant the particular estate determines, yet it doth not hold in the case of *trustees*. The ground the law goes upon is, that a freehold cannot be in abeyance, because there must be a tenant of the freehold to perform services, and to answer to a *præcipe*, and all writs to be brought concerning the realty; but this holds not in the case of an equitable estate, because the trustee is tenant of the freehold to perform the services and answer to writs afore-said: so neither doth it hold in case of a *copyhold*; for there no *præcipe* can be brought, being parcel of the manor only, and the freehold is in the lord. 1 *Atk.* 590. 3 *Atk.* 12.

These trustees to preserve contingent remainders have an estate, and not only a right of entry; and may bring a bill to

to stay waste, or the like, before the contingent remainder man shall be *in esse*. 1 *Vez.* 555.

And trustees of the *legal* estate of inheritance are sufficient trustees to support contingent remainders. 2 *Vez.* 230.

3. *Of remainders created by will; commonly called executory devises.*

IN last wills and testaments greater latitude is allowed, and in them remainders may be created contrary to the rules laid down for the construction of deeds; but these are not allowed to be strictly remainders, but are called by another name, that of EXECUTORY DEVISES, or devises hereafter to be executed. 2 *Black. b. 2. c. 11. f. 2.*

An executory devise of lands is such a disposition of them by will, that thereby no estate vests at the death of the devisor, but only on some future contingency: it differs from a remainder in three very material points; as,

(1.) That it needs not any particular estate to support it; as when a man deviseth a future estate to arise upon a contingency, and till that contingency happens, doth not dispose of the fee simple, but leaves it to descend to his heir at law: so if one devises land to an unmarried woman and her heirs upon her day of marriage, here is, in effect, a contingent remainder, without any particular estate to support it. This limitation, though it would be void in a deed, yet is good in a will, by way of *executory devise*; for since by a devise, a freehold may pass without livery of seisin, (as it must do if it passes at all,) therefore it may commence *in futuro*, and needs no particular estate to support it. And hence it is, that such an executory devise, not being a present interest, cannot be barred by a recovery suffered before it commences. *Id.*

And if it appears that the testator, however improperly his will may be penned, manifestly intended a strict settlement, though there are no words in the will to preserve contingent remainders, a court of equity will direct trustees to be inserted in a conveyance to be settled by the master; and whenever the court makes use of the words *strict settlement* in an order, it implies a direction to the master to have *trustees to preserve contingent remainders* inserted. 1 *Atk.* 593. 2 *Atk.* 279.

(2.) By executory devise a fee simple, or other less estate, may be limited after a fee simple; and this happens where a man deviseth his whole estate in fee, but limits a remainder thereon to commence on a future contingency; as if a man deviseth lands to one and his heirs, but if the devisee dies before the age of twenty-one, then to another and his heirs; this remainder, though void in a deed, is good by way of executory devise. But in both these species of executory devises, the contingencies ought to be such as may happen within a reasonable time; as within one or more life or lives in being, or within a moderate term of years; for courts of justice will not indulge even wills, so as to create a perpetuity. The utmost length that has hitherto been allowed, is that of a life in being, and until the eldest child shall attain the age of twenty-one years. 2 Black. b. 2. c. 11. f. 2.

(3.) By an executory devise a remainder may be limited of a chattel interest, after a particular estate for life created in the same, which could not be done by deed; for by law the first grant of it to a man for life, was a total disposition of the whole term; but afterwards it was allowed, that a term of years might be given to one for life, and limited over in remainder to another. Yet, in order to prevent the danger of perpetuities, it was settled, that though such remainders may be limited to as many persons successively as the devisor thinks proper, yet they must be all in being during the life of the first devisee; for then they are like candles all lighted and consuming together, and the ultimate remainder is in reality only to that remainder man who happens to survive the rest. *Id.*

And it is now settled, that if a man, either by deed or will, limits his books, furniture, or the like, to one for life, with remainder over to another, this remainder is good: but where an *estate tail* in things personal is given to the first or any subsequent possessor, it vests in him the total property, and no remainder over shall be permitted on such a limitation; for this, if allowed, would tend to a perpetuity, as the devisee or grantee in tail of a chattel has no method of barring the intail; and therefore the law vests in him at once the intire dominion of the goods, being analogous to the fee simple which a tenant in tail may acquire in a real estate. *Id.* c. 25.

REMEDY,

**REMEDY**, *remedium*, is the action or means given by the law for recovery of a right; and whenever the law giveth any thing, it gives also a remedy for the same.

**REMITTER**, is where one that hath right to lands, but is out of possession, hath afterwards the freehold cast upon him by some subsequent defective title, and enters by virtue of that title: in this case, the law *remits* him to his ancient and more certain right, and by an equitable fiction supposes him to have gained possession in consequence and by virtue thereof; and this, because he cannot possibly obtain judgment at law, to be restored to his prior right, since he is himself the tenant of the land, and therefore hath no person against whom to bring his action. 3 *Black.* 190.

**RENT**, *render, redditus*, is a certain profit issuing yearly out of lands and tenements corporeal. It must be a profit; yet there is no occasion for it to be, as it usually is, a sum of money; for spurs, capons, horses, corn, and other matters, may be rendered by way of rent. It may also consist in services, or manual operations; as to plough so many acres of ground, to attend the king or the lord to the wars; which services, in the eye of the law, are *profits*. This profit must also be *certain*, or that which may be reduced to a certainty. It must also issue *yearly*, though it need not be every year, but it may be every second, third, or fourth year. It must *issue out of* the thing granted, and not be part of the land or thing itself; wherein it differs from an exception in the grant, which is always part of the thing granted. It must issue out of *lands and tenements corporeal*; that is, from some inheritance whereunto the owner or grantee of the rent may have recourse to distrain. 2 *Black.* 41.

There are at common law three kinds of rents; *rent service*, *rent charge*, and *rent seck*. *Rent service*, is where the tenant holdeth his land of his lord by fealty and certain rent; or by homage, fealty, and certain rent; or by other service and certain rent: and it is called a *rent service*, because it hath some corporal service incident to it, which, at the least, is fealty. *Rent charge*, is so called because the land for payment thereof is *charged* with a distress. *Rent seck*, *redditus seccus*, a dry rent, is where the land is granted without any clause of distress for the same. 1 *Inst.* 141, 2, 3.



There are also other species of rents; such as *rents of assize*, which are the certain established rate of the freeholders and ancient copyholders of a manor, so called, because they are *assized* and certain, and thereby distinguished from *redditus mobiles*; farm rents for life, years, or at will, which are variable and uncertain. Those of the freeholders are frequently called *chief rents*, *redditus capitales*; and both sorts are indifferently denominated *quit rents*, *quieti redditus*; so called because the tenant thereby goes *quit* and free of all other services. When these payments were reserved in silver, or *white* money, they were anciently called *white rents*, or *blanch farms*, *redditus albi*; in contradistinction to rents reserved in work, grain, or the like, which were called *redditus nigri*, or *black malle*. 2 *Black.* 42.

*Fee farm rent*, is a rent charge issuing out of an estate in fee, of at least one fourth of the value of the lands at the time of its reservation; for a grant of lands, reserving so considerable a rent, is indeed only letting lands to *farm* in *fee* simple, instead of the usual methods for life or years. *Id.* 43.

The difference between the several kinds of rents, in respect of the method for recovering them, is now totally abolished, they being all recoverable by distress, in pursuance of the several acts of parliament for that purpose.

Strictly, the rent is demandable and payable before the time of sun-set of the day whereon it is reserved; though some have thought it not absolutely due till midnight. 2 *Black.* 43.

But for rent in arrear, one cannot distrain until after the last day on which it is due; for till then it is not in arrear. And therefore some use to reserve the last half year's rent at some time before the expiration of the term, that, if the rent is not paid, they may have opportunity to distrain for it during the term. 1 *Inst.* 47.

**REPAIRS.** A tenant for life or years may cut down timber trees to make reparations, although he be not compelled thereto; as where a house is ruinous at the time the lease is made, and the lessee suffers it to fall, he is not bound to rebuild it; and yet, if he fell timber for reparations, he may justify the same, *Co. Litt.* 54.

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And where a lessee covenants, that from and after the amendment and reparation of the houses by the lessor, he, at his own charges, will keep and leave them in repair; in this case the lessee is not obliged to do it, unless the lessor first make good the reparations. And if it be well repaired at first when the lease began, and after happen to decay, the lessor must *first* repair, before the lessee is bound to keep it so. *Cro. Jac.* 645.

**REPLEADER**, is where issue is joined on a fact totally immaterial, or insufficient to determine the right, so that the court upon the finding, cannot know for whom judgment ought to be given; in which case, the court will, after verdict, award a *repleader*; that is, that the parties *plead again*; unless it appears from the whole record that nothing material can possibly be pleaded in any shape whatever; and then a repleader would be fruitless. And whenever a repleader is granted, the pleadings must begin *de novo* at that stage of them, whether it be the plea, replication, rejoinder, or whatever else, wherein there appears to have been the first defect or deviation from the regular course. When a repleader is awarded, it must be without costs. 3 *Black.* 395. *Bur. Mansf.* 304.

#### REPLEVY:

1. It is worthy of observation, how provident the law is that men's beasts, cattle, or other goods, be not unjustly or excessively distrained; and if they be, that deliverance be speedily made of them by replevy (or *taking back the pledge*); otherwise, the husbandry of the realm, and men's other trades, might be overthrown or hindered. 2 *Inst.* 137.

2. To which purpose, it is enacted by the 1 & 2 *P. & M. c.* 12. that the sheriff of every county shall, at his first county day, or in two months after he hath received his patent of office, appoint and proclaim in the shire town, four deputies at the least dwelling not above twelve miles one distant from another, to make replevies.

3. In order to obtain a replevy, application must be made to the sheriff, or one of his deputies, and security given that the party replevying will pursue his action against the distrainer; for which purpose, by the ancient law, he is required to put in pledges to prosecute, *plegios de prosequendo*; and that if the right be determined against him, he will return the distress again, for which purpose he is to find

pledges to make return, *plegios de retorno habendo*. These pledges are discretionary, and at the peril of the sheriff. 3 *Black.* 147.

And in the case of distress for *rent* in particular, it is enacted by the 11 G. 2. c. 19. that the sheriff or other officer having authority to grant replevies, shall, in every such replevy, take in his own name, from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods distrained, in case a return shall be awarded before any deliverance be made of the distress; and the sheriff shall assign such bond to the avowant or person making conscience; which, if forfeited, may be sued in the name of the assignee.

4. Although the cattle distrained be put into a castle or fortress, yet the sheriff must nevertheless make replevin and deliverance; for, if occasion be, he may take the power of the county with him for that purpose. But if the cattle are driven out of the county, or concealed, so that the sheriff cannot make replevin, then a writ of *withernam* shall go to the sheriff to take so many of the distrainer's cattle, and keep them until he shall have the original distress forthcoming. 1 *Roll's Abr.* 565.

5. After the goods are delivered back to the party replevying, he is then bound to bring his action of replevin against the distrainer; which may be prosecuted in the county court, be the distress of what value it may: but either party may remove it to the superior courts of king's bench or common pleas, the plaintiff at pleasure, and the defendant upon reasonable cause. 3 *Black.* 149.

6. Upon the action brought, and declaration delivered, the distrainer, who is now the defendant, makes *avowry*: that is, avows taking the distress in his own right, and sets forth the reason of it; as for rent arrear, damage done, or other cause; or else, if he justifies in another's right, as his bailiff or servant, he is said to make *cognizance*: that is, he acknowledges the taking, but insists that such taking was legal, as he acted by the command of one who had a right to distrain. And on the truth and legal merits of this avowry or cognizance, the cause is determined. *Id.*

7. If it be determined for the plaintiff, namely, that the distress was wrongfully taken, he hath already got his goods back into his own possession, and shall keep them, and

moreover recover damages. But if the defendant prevails, by the default or nonsuit of the plaintiff, then he shall have a writ *de retorno habendo*, whereby the goods or chattels (which were distrained, and then replevied) are returned again into his custody, to be sold, or otherwise disposed of, as if no replevin had been made. *Id.*

If the distress was for damage feasant, the distrainor may keep the goods so returned, until tender shall be made of sufficient amends. *Id.* 146.

8. On a *retorno habendo* awarded, the party desiring to have the cattle or goods returned must shew them to the sheriff; for otherwise, the sheriff may not know them. *Caf. Hardw.* 121.

REPLICATION, is the exception or answer made by the plaintiff to the defendant's plea. For if the plea made by the defendant to the plaintiff's declaration, doth not amount to an issue or total contradiction of the declaration, but only evades it, then the plaintiff may *reply* or *plead again*, either traversing the plea, that is, totally denying it; as if on an action of debt upon bond, the defendant pleads that he paid the money when due, here the plaintiff in his replication may totally traverse this plea, by denying that the defendant paid it; or he may allege new matter in contradiction to the defendant's plea; as when the defendant pleads no award made, the plaintiff may reply and set forth an actual award, and assign a breach of it. To the replication the defendant may *rejoin*, or put in an answer, called a *rejoinder*; unto which the plaintiff may answer again by a *sur-rejoinder*. 3 *Black.* 309.

The replication must not vary from the declaration, but must pursue and maintain the cause of the plaintiff's action; otherwise it will be a departure in pleading, a going to another matter, a saying and unsaying, which the law will not allow. 1 *Inst.* 304.

REPORTS *of cases*, are histories of the several cases and decisions of the courts, with a short summary of the proceedings, which are preserved at large in the record, the arguments on both sides, and the reasons the court gave for its judgment, taken down in short notes by persons present at the determination. And these serve as indexes to, and also to explain the records; which always, in matters of  
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consequence and nicety, the judges direct to be searched.  
1 *Black.* 71.

There are likewise *reports*, when the court of chancery, or other court, refer the stating of some case or other matter to a master of chancery, or other referee; his certificate therein is called a report, on which the court makes an absolute order. *Pract. Solic.* 67.

REPRIEVE, from *reprendre*, to take back, is the withdrawing of judgment for a time, whereby the execution is suspended. This may be at the discretion of the judge, either before or after sentence; as where the judge is not satisfied with the verdict, or the evidence is suspicious, or the indictment is insufficient, or he is doubtful whether the offence be within clergy; or sometimes if it be a small felony, or any favourable circumstances appear in the criminal's character, in order to give room to apply to the crown for either an absolute or conditional pardon. These arbitrary reprieves may be granted or taken off by the justices of gaol delivery, although their sessions be ended and their commission expired; but this is rather by common usage than of strict right. A reprieve may also be from the necessity of the law; as where a woman is capitally convicted, and pleads her pregnancy; though this is no cause to stay judgment, yet it is to respite the execution till she be delivered. 4 *Black.* 394.

REPRISAL, letters of. See MARQUE.

REPUTATION, is the vulgar opinion concerning any particular matter of which there is not positive proof. It is not what this or that man says, but what hath generally been said or thought by many. And some special matter must be averred to induce a reputation. 2 *Lill. Abr.* 464.

Land may be reputed part of a manor, though not really so. There may be a parish in reputation, an office in reputation, and the like. 3 *Nelf. Abr.* 137.

REQUEST, of things to be done. Where one is to do a collateral thing agreed upon by contract, there ought to be a request to do it. But if a duty is due, or a debt exists before a promise made, it is payable without request; for then the request is not any cause of the action. So where  
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an action of debt is brought for money due upon a bond, there needs no special request; but otherwise it is of a thing collateral. 2 *Lill.* 464.

**REQUESTS**, court of, was a court of equity, of the same nature with the court of chancery, but inferior to it; principally instituted for the relief of such petitioners, as in cases of equity addressed themselves by supplication to his majesty. Of this court the lord privy seal was chief judge, assisted by the *masters of requests*. It had its beginning about the 9 *Hen.* 7. and being thought oppressive and arbitrary, was abolished by act of parliament 16 *Car. c.* 10. 4 *Inst.* 97.

**RESCOUS**, is an old French word, coming from *recourer*, *recuperare*, to recover; and denotes an illegal taking away and setting at liberty of a distress taken, or of a person arrested by process or course of law. 1 *Inst.* 160.

Also it is used for a writ which lies for a rescue, called *breve de rescussu*.

If goods be distrained without cause, or contrary to law, the owner may make rescue; but if they be once impounded, even though taken without any cause, the owner may not break the pound and take them out, for they are then in custody of the law. 3 *Black.* 12.

An hinderance of a person to be arrested that hath committed felony, is a misdemeanor, but no felony; but if the party be arrested, and then rescued, if the arrest was for felony, the rescuer is a felon; if for treason, a traitor; if for trespass, finable. 2 *Harv.* 140.

But on an indictment for a rescue, the principal must be first attainted before the rescuer can be punished, for it may turn out that there has been no offence committed.

**RESIDENCE.** Regularly, personal residence is required of ecclesiastical persons upon their cures; and to that end, by the common law, if he that hath a benefice with cure be chosen to a temporal office, he may have the king's writ for his discharge. 2 *Inst.* 625.

By the 25 *H.* 8. c. 13. persons wilfully absenting themselves from their benefices for one month together, or two months in the year, shall forfeit 10*l.* for every month's absence, except chaplains to the king, or others therein mentioned, during their attendance in the household of such

as retain them; and also except all heads of houses, magistrates, and professors in the universities, and all students under forty years of age, residing there *bonâ fide* for study.

By the 13 *Eliz. c. 20.* and divers other subsequent statutes, if any beneficed clergyman be absent from his cure above fourscore days in one year, he shall not only forfeit one year's profit of his benefice, to be distributed among the poor of the parish, but all leases made by him of the profits of such benefice, and all covenants and agreements of like nature, shall cease and be void; except in the case of licensed pluralists, who are allowed to demise the living on which they are non-resident to their curates only.

By the 1 *W. c. 26.* if a man presented by either of the universities to a popish living, shall be absent above sixty days in one year, the living shall thereby become void.

It is not only non-residence if a man dwell in an house in another parish, but it is also non-residence to dwell in another house in the same parish; because the statute of non-residence was made, not only that the cure should be served, and hospitality maintained, but also that the parsonage house should be upholden, and preserved in a condition fit for incumbents to live in, that their successors thereby may receive no prejudice.

But if a man hath no parsonage house, or remove by advice of his physician for better air, in order to the recovery of his health, or be removed and detained by imprisonment, or the like, he is not punishable by the said statute; for the words of the statute are, if he shall *absent himself wilfully*.

**RESIDUARY LEGATEE**, is he to whom the residue of the personal estate is given by will, after payment of the debts and particular legacies.

**RESIGNATION** of a benefice, is where a parson, vicar, or other beneficed clergyman, voluntarily gives up and surrenders his charge and preferment to those from whom he received them.

Resignation is of no avail till accepted by the ordinary; and therefore all presentations made to benefices resigned, before such acceptance, are void.

After acceptance of the resignation, lapse shall not run but from the time of notice given by the bishop to the patron. The church indeed is void immediately upon acceptance, and the patron may present if he pleases; but as to lapse, he

he has time to present until six months shall be expired after notice.

General bonds of resignation have been held not to be within the statute of simony, and therefore allowed to be good, both at law and in equity, unless there appeared some unfair use was intended to be made thereof. But in the case of *Efytche* against the bishop of *London*, in the house of lords, it was determined otherwise. See *Burn's Ecclesiastical Law*; tit. SIMONY.

**RESPONDEAT OUSTER**, is to *answer over* in an action on the merits of a cause, after his plea in abatement of the action hath been over-ruled as frivolous.

**RESPONDENTIA**, (from *respondeo*, to answer,) is where the master of a ship, in a foreign country, takes up money to enable him to carry on his voyage, and pledges the goods and merchandize, which must necessarily be sold or exchanged in the course of the voyage; in which case the borrower, personally, is bound to *answer*, and is therefore said to take up money at *respondentia*; as where money is borrowed on the security of the ship itself, where the keel or *bottom* of the ship, (a part in the name of the whole,) is pledged, it is called *bottomry*. 2 *Black.* 458.

**RESTITUTION**, is where one being attainted of treason or felony, (whereby the blood is stained or corrupted,) he or his heirs is restored to his lands or possessions. The king by his charter may restore lands or goods forfeited to him by any attainer; but if by attainer the blood is corrupted, this can only be restored by act of parliament. *Wood. b. 4. c. 5.*

In the case of stolen goods, by statute 21 *Hen. 8. c. 11.* on conviction of an offender, the prosecutor is intitled to have his goods again, by writ to be granted by the justices, notwithstanding the property of them is endeavoured to be altered by sale in market overt. And though this may seem somewhat hard upon the buyer, yet since it is come to this, that either the owner or buyer must suffer, the law prefers the right of the owner who has done a meritorious action, by pursuing the felon to punishment, to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction. And it is now usual for the court, upon the conviction of a felon, to order (without any writ) immediate restitution of such goods as are brought into court.

Or



Or the party himself may retake his goods wherever he happens to find them, unless a new property be fairly acquired therein. 4 *Black.* 362.

**RESTITUTION OF TEMPORALTIES**, is a writ directed to the sheriff to restore the temporalities to a bishop elected, confirmed, and consecrated. *Wood. b. 4. c. 4.*

**RESULTING USE**, is when an use limited by a deed expires, or cannot vest, it then returns back to him who raised it. As if a man makes a feoffment to the use of his intended wife for life, with remainder to the use of her first-born son in tail; here, till he marries, the use results back to himself; after marriage, it is executed in the wife for life; and, if she dies without issue, the whole results back to him in fee. 2 *Black.* 335.

**RETAINER** *of debts.* An executor, among debts of equal degree, is allowed to pay himself first, by retaining in his hands so much as his debt amounts unto. And the reason is, because an executor cannot, without an apparent absurdity, commence a suit against himself; and therefore, if he could not retain, he would be in a worse condition than any other creditor; but an executor of his own wrong is not allowed to retain. 3 *Black.* 18.

**RETAINING** *of a servant*, is the hiring of him: so retaining of a *counsel*, is the engaging of him in the cause.

**RETORNO HABENDO**, is a writ that lies where cattle are distrained and replevied, and the person that took the distress justifies the taking, and proves it to be lawful; upon which the cattle are to be returned to him. This writ also lieth when the plaint in replevin is removed by *recordare* into the king's bench or common pleas, and he, whose cattle are distrained, makes default, and doth not prosecute his suit. *F. N. B.*

**RETRAXIT**, is where the plaintiff cometh in person in the court where his action is brought, and saith he will not proceed in it; and this is a bar to that action for ever; whereas, after a nonsuit the plaintiff may begin again. 8 *Co.* 58.

RETURN,

**RETURN**, is of various kinds in our law ; but it is most commonly used for the return of writs, which is the certificate of the sheriff made to the court of what he hath done, touching the execution of any writ directed to him ; and where a writ is executed, or the defendant cannot be found, or the like, this matter is indorsed on the writ by the officer, and delivered into the court whence the writ issued, at the day of the return thereof, in order to be filed ; which return, is always made to be at least fifteen days from the date or teste of the writ. 2 *Lill. Abr.* 476.

The name of the sheriff must always be to the return of writs, otherwise it doth not appear how they came into court. If a writ be returned by a person to whom it is not directed, the return is not good ; it being the same as if there were no return at all upon it ; and after a return is filed, it cannot be amended ; but before, it may. *Id.* 477.

In each term there are stated days for the return of writs, which are generally at about the distance of a week from each other ; on some one of which days, all original writs are made returnable, and therefore are generally called the *returns* of that term.

If the sheriff makes no return, the court will order an attachment against him for his contempt ; if he make an insufficient return, the court will amerce him ; but if he make a false return, the party grieved may have his action against him. *Wood. b. 1. c. 7.*

There are also returns of bailiffs of liberties, returns of jurors by the sheriff for trial of causes, returns of commissions by commissioners, and many others of various kinds.

**REVERSAL** of a judgment, may be either for matter foreign to, or not apparent on the face of the record, or for a mistake in the record itself, by a writ of error ; which lies from all inferior criminal jurisdictions to the court of king's bench, and from the king's bench to the house of peers. 4 *Black.* 392.

#### REVERSION :

A **REVERSION**, (from *reverta*, to return,) is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. Sir *Edward Coke* describes a reversion to be the returning of land to the grantor or his heirs, after the grant is over ; as if there be a gift in tail, the reversion of the fee

simple

simple is in the donor ; in a lease for life, or for years, the reversion is in the lessor. For the fee simple of all lands must abide somewhere ; and if he, who was before possessed of the whole, carves out of it any smaller estate, and grants it away, whatever is not so granted remains in him. A reversion is therefore never created by deed or writing, but arises from construction of law ; whereas a remainder can never be limited, unless by either deed or will. 2 *Black.* 175.

When the particular estate determines, then the reversion comes into possession, which before was separated from it ; for he that hath the possession, cannot have the reversion, because by uniting them, the one is *merged* or sunk in the other. 2 *Lill. Abr.* 484.

In order to assist such persons as have any estate in remainder, reversion, or expectancy, after the death of others, against fraudulent concealments of their deaths, it is enacted by the 6 *An. c.* 18. that all persons, on whose lives any lands or tenements are holden, shall, (upon application to the court of chancery, and order made thereupon,) once in every year, if required, be produced to the court, or to commissioners appointed by the said court ; or upon neglect or refusal, they shall be taken to be actually dead, and the person intitled to such expectant estate may enter upon and hold the lands and tenements till the party shall appear to be living.

A reversioner may bring an action upon the case for spoiling of trees, or other damage to the reversion ; but he cannot bring an action of trespass, for that is founded on the possession. 3 *Lev.* 209.

On an action brought by a reversioner against the defendant for erecting a wall whereby the lights were obstructed, it was objected, that a temporary nuisance cannot be an injury to the inheritance, for it may be abated before the reversioner comes into possession ; but, by the court, it is a present injury ; for if the reversioner wanted to sell the reversion, this obstruction would lessen the value of it. And the wrong doer is liable to a double action ; by the possessor, and by the reversioner, in respect of their several interests. *Burr. Mansf.* 2141.

A reversion expectant upon an estate tail is not assets for payment of debts ; because it lieth in the will of tenant in tail to dock and bar it at his pleasure : otherwise it is of a reversion on an estate for life or years. 1 *Inst.* 171. 6 *Co.* 58.

REVER.

**REVERTER.** A *formedon* in *reverter* is, where there is a gift in tail, and afterwards by the death of the donee, or his heirs without issue of his body, the reversion falls in upon the donor, his heirs or assigns; in which case, the reversioner shall have a writ of *formedon* (*secundum formam doni*) to recover the lands; wherein he shall suggest the gift, his own title to the reversion derived from the donor, and the failure of issue upon which his reversion takes place. 3 *Black.* 192.

**REVIEW.** A bill of a review may be had in a court of equity, upon apparent error in judgment, appearing upon the face of the decree; or, by special leave of the court, upon oath made of the discovery of new matter or evidence, which could not possibly be had or used at the time when the decree passed. But no new evidence or matter then in the knowledge of the parties, and which might have been used before, shall be a sufficient ground for a bill of review. 3 *Black.* 454.

**REVIVOR,** is when a bill in chancery hath been exhibited against one who answers, and before the cause is heard, (or if heard, and the decree is not inrolled,) either party dies; in this case, a *bill of revivor* must be brought, to put the proceedings again in motion, without which they remain at a stand. 3 *Black.* 448.

**REVOCATION,** or new declaration, is a deed made pursuant to some proviso contained in a former deed or conveyance; giving power to revoke or call back something granted; and by a new declaration, to create a new estate of the lands; after which revocation and declaration, the lands shall settle accordingly. These provisos, containing power of revocation in voluntary conveyances, are become very frequent, and pass by raising of uses according to the 27 *Hen.* 8. c. 10. for being coupled with an use, they are allowed to be good, and not repugnant to the former estates. But in case of a feoffment, or other conveyance, whereby the feoffee or grantee is in by the common law, such proviso would be merely repugnant and void. *Wood. b. 2. c. 3.*

These revocations are favourably interpreted, because many men's inheritances depend upon them. *Id.*

Some things may be revoked of course, though they are made irrevocable by express words; as a letter of attorney, a



submission to an award, a testament or last will; for these of their own nature are revocable. *Id.*

But by the statute of frauds and perjuries, 29 C. 2. c. 3. no devise of *lands* shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, signed in the presence of three or four witnesses.

**RIDER**, is a schedule or small piece of parchment added to some part of a record; as when, on the third reading of a bill in parliament, a new clause is added, this is tacked to the bill on a separate piece of parchment, and is called a rider.

**RIGHT**, writ of, is in its nature the highest writ in the law, and lieth only of an estate in fee simple, and not for him who hath a less estate. This writ lies concurrently with all other real actions, in which an estate of fee simple may be recovered: and it also lies *after* them, being as it were an appeal to the mere right, when judgment hath been had as to the possession in an inferior possessory action. But though a writ of right may be brought, where the demandant is intitled to possession, yet it rarely is adviseable to be brought in such cases; as a more expeditious and easy method is had, without meddling with the property, by proving the demandant's own, or his ancestor's possession, and their illegal ouster, in one of the possessory actions. But in case the right of possession be lost by length of time, or by judgment against the true owner in one of these inferior suits, there is no other choice; this is the only remedy that can be had, and it is of so forcible a nature, that it overcomes all obstacles, and clears all objections that may have arisen to cloud and obscure the title. 3 *Black.* 193.

There are also some other writs, which though not strictly writs of right, yet are in the nature of writs of right; as the writ of right of advowson, of ward, of dower, of formedon, of escheat. This writ ought to be first brought in the court baron of the lord of whom the lands are holden, and then it is open or *patent*: but if he holds no court, or hath waived his right, it may be brought in the king's courts originally; and then it is a writ of right *close*, being directed to the sheriff, and not to the lord. But now, the manner of proceeding by writ of right is almost antiquated and out of use, and the

the title of lands is usually tried upon actions of ejectment or trespass. 3 *Black.* 192.

RIGHTS AND LIBERTIES of the subject, are co-eval with our form of government, and were asserted and confirmed by the great charter of liberties, called *magna charta*, in the time of king *Henry* the second, and many other succeeding kings of this realm. Afterwards they were confirmed by a parliamentary declaration, called the *petition of rights*, in the reign of king *Charles* the first; and finally asserted and demanded as the *just rights of the subject*, by the *declaration of rights*, in the act of settlement of the crown at the revolution.

RIOT. When three or more persons shall assemble themselves together, with an intent mutually to assist one another against any who shall oppose them, in the execution of some enterprize of a private nature, with force or violence, against the peace, or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful; if they only meet to such a purpose or intent, although they shall afterwards depart of their own accord, without doing any thing, this is an *unlawful assembly*: if after their first meeting, they shall move forward towards the execution of any such act, whether they put their intended purpose in execution or not, this is a *rout*; and if they execute such a thing in deed, then it is a *riot*. 1 *Haw.* 155.

To constitute a riot, there must be three persons at the least; and therefore, if the jury do acquit all but two, and find them guilty, the verdict is void, unless they be indicted *together, with other rioters unknown*; because it finds them guilty of an offence whereof it is impossible that they should be guilty; for there can be no riot where there are no more persons than two. 2 *Haw.* 441.

If a number of persons, being met together at a fair, or market, or church aisle, or on any other lawful and innocent occasion, happen on a sudden quarrel to fall out, they are not guilty of a riot, but of a sudden affray only; but if upon a dispute happening, they form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot. 1 *Haw.* 156.

Also it is possible for three persons, or more, to assemble with an intention to execute a wrongful act, and also actually to perform their intended enterprize, without being riotous;

as if a man assemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, which cannot be carried without a great number, if the number be not more than are needful for such purpose, although another man hath better right to the thing so carried away, and that this act be wrong and unlawful, yet it is of itself no riot, except there be withal threatening words used, or other disturbance of the peace. *Dalt. c. 137.*

Much more may any person, in a peaceable manner, assemble a meet company to do any lawful thing, or to remove or cast down any common nuisance. Thus every private man, to whose house or land any nuisance shall be done, may in peaceable manner assemble a meet company, with necessary tools, and may remove the nuisance. But if in removing the nuisance, they use any extraordinary words, (as to say they will do it, though they die for it, or such like words,) or shall use any other behaviour, in apparent disturbance of the peace, it is then a riot; and therefore where there is cause to remove any such nuisance, or to do any like act, it is the safest not to assemble any multitude of people, but only to send one or more persons; or if a greater number, yet no more than are needful, and only with meet tools, to remove the same; and that such persons tend their business only, without disturbance of the peace, or threatening speeches. *Id.*

By the common law, any private person may lawfully endeavour to suppress a riot, by staying those, whom he shall see engaged therein, from executing their purpose; and also by stopping others whom he shall see coming to join them: and also the sheriff, constable, or other peace officer, may and ought to do all that in them lies towards the suppressing of a riot, and may command all other persons to assist therein. *1 Haw. 159.*

And by statute 34 *Ed. 3. c. 1.* one justice of the peace hath power to restrain rioters, and cause them to be imprisoned according to the nature of their offence: but if the rioters are above the number of twelve, the power of a justice is very much enlarged, by the *1 G. 2. c. 5.* commonly called the *riot act*; by which it is enacted, that on notice or knowledge of any persons tumultuously assembled, to the number of twelve or more, he shall (together with such help as he shall command) resort to the place; and there he shall, with a loud voice, command, or cause to be commanded, silence to be, while proclamation is making; and after that, shall

shall make or cause proclamation to be made, in the words or to the effect following: "Our sovereign lord the king chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of king *George* the first, for preventing tumults and riotous assemblies. God save the king." And if any person shall with force oppose or hinder any person, whereby the proclamation shall not be made; or if any twelve or more shall continue together for one hour after proclamation made, or after such hindrance; the same shall be felony without benefit of clergy. And if any rioters, (though under the number of twelve, and whether any proclamation be made or not,) shall demolish or pull down, or begin to demolish or pull down, any church or chapel, or any building for religious worship, registered according to the act of toleration, or any dwelling-house, barn, stable, or other out-house, they shall be guilty of felony without benefit of clergy; and the hundred shall answer damages as in cases of robbery.

The punishment of rioters by the common law is fine and imprisonment.

By statute 13 *H. 4. c. 7.* and 2 *H. 5. c. 8.* two justices, together with the sheriff, may go with the power of the county, if need be, to suppress any riot, and arrest the rioters, and record upon the place the nature and circumstances of the riot; which record alone is a sufficient conviction of the offenders, and the justices thereupon may fine and imprison them.

**RIVERS** washing away their banks. See **ALLUVION**.

**ROBBERY**, is a felonious and forcible taking from the person of another, of goods or money to any value, by violence, or putting him in fear. 1. There must be a *taking*, otherwise it is no robbery; but it is sufficient, although the taking be not strictly from the person of another, if it be done in his presence; as where a robber by menaces and violence puts a man in fear, and drives away his cattle or other goods before his face. 2. It is not material of what *value* the thing taken is; a penny, as well as a pound, thus forcibly extorted, makes a robbery. 3. The taking must be by *force*, or a previous putting in *fear*, which makes the violation of the person more atrocious than privately stealing.



This previous violence, or putting in fear, is the criterion that distinguishes robbery from other larcenies. For if a man privately steals 6*d.* from the person of another, and afterwards keeps it by putting him in fear, this is no robbery, for the fear is subsequent; neither is it capital, as private stealing, being under the value of 12*d.* Not that it is necessary, although it be usual, to lay in the indictment that the robbery was committed by putting in fear; it is sufficient, if laid to be done by violence. And when it is laid to be done by putting in fear, this doth not imply any great degree of terror or affright in the party robbed: it is enough that so much force, or threatening by word or gesture, be used, as might create an apprehension of danger, or induce a man to part with his property without or against his consent. Thus, if a man be knocked down without previous warning, and stripped of his property while senseless, though strictly he cannot be said to be put in fear, yet this is undoubtedly a robbery. 4 *Black.* 243.

In case of a robbery committed, the hundred is liable to answer damages, 27 *El. c.* 13. And a 40*l.* reward is given for apprehending a robber, and prosecuting him to conviction. 4 *W. c.* 8.

**ROBERDSMEN**, followers of *Robert Hood*, who in the reign of king *Richard* the first committed great outrages on the borders of *England* and *Scotland*, in woods and deserts, by robbery, burning of houses, felony, waste, and spoil, and principally by and with vagabonds, idle wanderers, night-walkers, and draw-latches. And although he lived in *Yorkshire*, yet men of his quality took their denomination of him, and were called *Robertsmen* throughout all *England*. And divers acts of parliament were made against them. 3 *Inst.* 197.

**ROGUES.** See **VAGRANTS**.

**ROMESCOT**, a tribute of a penny for every family, paid yearly at *Rome*; otherwise called *Peter-pence*.

**ROSETUM**, (from the British *rhos*,) a low watry place of reeds and *rushes*.

**ROUT**, is where three or more persons meet to do an unlawful act upon a common quarrel; as forcibly breaking down

down fences upon a right claimed of common or of a way, and make some advances towards it. And the difference between an *unlawful assembly*, a *rout*, and a *riot*, is this: An *unlawful assembly* is when three or more do assemble themselves together to do an unlawful act; as to pull down inclosures, to destroy a warren and the game therein, and depart without doing it, or making any motion towards it: a *rout* is, when, after their meeting, they move forward towards the execution of any such act, whether they put their intended purpose in execution or not: a *riot* is, where they actually commit an unlawful act of violence, either with or without a common cause of quarrel; as if they beat a man, or kill game in another man's liberty, or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuisance, in a violent and tumultuous manner, 4 *Black.* 140.

RUBRICK, in the book of common prayer, is that part which contains rules and directions for the celebration of divine service; so called, because it was anciently written in *red* letters.

RULE OF COURT. For breach and contempt of a rule of court, an attachment lies; and if a rule of court is made betwixt parties by their consent, though the court would not have made such rule without their consent, yet if either party refuses to obey such a rule made, the court will, upon motion, grant an attachment against the party that disobeys the rule.

But generally, an attachment is not grantable for disobedience to any rule, unless the party hath been served with it personally; as for disobeying a rule at *nisi prius*, till it is made a rule of court. 1 *Salk.* 71. 83.

Persons submitting their differences to be determined by arbitrators, may agree that their submission be made a rule of any of his majesty's courts of record at *Westminster*; in which case, if either party shall refuse to perform the award, the submission may be entered of record in such court; and, on motion for that purpose, the court will grant an attachment. 9 & 10 *W. c.* 15.

RUNCARIA, land full of brambles and briars. 1 *Inst.* 5.

**RURAL DEANS**, are very ancient officers of the church, but now almost grown out of use, though their deanries still subsist as an ecclesiastical division of the diocese, or archdeaconry. Their office was, to execute the bishop's processses, to inspect the lives and manners of the clergy and people within their district, and to report the same to the bishop; to which end, that they might have knowledge of the state and condition of their respective deanries, they had power to convene rural chapters.

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## S A F

**SABBATH BREAKING.** See LORD'S DAY.

**SABULONARIUM**, a gravel pit, or liberty to dig gravel or sand: also money paid for the same.

**SAC**, *faca*, an ancient privilege which a lord of a manor claims to have in his court, of holding plea in causes of trespass arising amongst his tenants, and of imposing fines and amercements touching the same. It is sometimes used to signify the amercement itself.

**SACRAMENT.** See LORD'S SUPPER.

**SACRILEGE**, robbing of the church, or stealing things out of a sacred place.

**SAFE CONDUCT**, is a privilege granted by the crown to foreigners to come into and abide in the realm, and send their goods from one place to another, according to the terms expressed in the several instruments. These letters by ancient statutes must be granted under the king's great seal, and enrolled in chancery. But passports under the king's sign manual, or licences from his ambassadors abroad, are now more usually obtained, and allowed to be of equal validity. 1 *Black.* 259.

And during the continuance of the safe conduct, either express or implied, the foreigner is under the protection of  
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the king and the law; and more especially, as it is one of the articles of *magna charta*, that foreign merchants shall be intitled to safe conduct and security throughout the kingdom; therefore any violation of either the person or property of such foreigner, may be punished by indictment in the name of the king. 4 *Black.* 69.

**SAIL CLOTH.** By the 9 G. 2. c. 37. every maker of *British* sail cloth shall stamp his name and place of abode in words at length on every piece; on pain of forfeiting 10 *l.*

**SALE,** is a transferring the property of goods and chattels from one to another, for valuable consideration.

If a man agrees with another for goods at a certain price, he may not carry them away before he hath paid for them; for it is no sale without payment. 2 *Black.* 446.

Where no place or time of delivery is appointed, it is always implied that the delivery be made immediately, and payment upon the delivery, unless it be inconsistent with the nature of the thing delivered, or it be otherwise specially agreed. 3 *Salk.* 61.

If the buyer doth not come at the time agreed on, and pay and take the goods, the seller ought to go and request him; and then if he doth not come and pay, and take away the goods in convenient time, the agreement is dissolved, and the seller is at liberty to sell them to any other person. 1 *Salk.* 113.

But if any part of the price be paid down, if it be but a penny, or any portion of the goods be delivered by way of earnest, the property is bound by it, and the vendee may recover the goods by action, as well as the vendor may the price of them. 1 *Salk.* 113. 2 *Black.* 448.

But by 29 C. 2. c. 3. no contract for the sale of goods of the value of 10 *l.*, or more, shall be valid, unless the buyer actually receives part of the goods sold, by way of earnest on his part; or unless he gives part of the price to the vendor, by way of earnest to bind the bargain, or in part of payment; or unless some note in writing be made and signed by the party, or his agent, who is to be charged with the contract.

And with regard to goods under the value of 10 *l.*, no contract, or agreement for the sale of them, shall be



valid, unless the goods are delivered within one year, or unless the contract be made in writing, and signed as aforesaid. 2 *Black.* 448.

If the vendee tenders the money to the vendor, and he refuses it, the vendee may seize the goods, or have an action against the vendor for detaining them. 2 *Black.*

If a man sells a horse, he may keep him till he is paid; and if the horse dies in his stable after sale, and before he is delivered, the seller may nevertheless recover the money, because the property was in the buyer. *Ibid.*

But by *Holt, Ch. J.* an earnest does not alter the property, but only binds the bargain, the property remaining in the vendor till payment of the money, or delivery of the goods. 12 *Mod.* 344. *M.* 11 *W.* 3. *K. & Anon.*

In contracts for sale, it is always understood, that the seller undertakes that the commodity he sells is *his own*; and if it proves otherwise, an action on the case lies against him for damages. 2 *Black.* *Ibid.*

In contracts for provisions, it is always implied that they are wholesome; and if they be not, the same remedy may be had. *Ibid.*

Lord Coke says, by the *civil law*, every man is bound to warrant the thing that he selleth or conveyeth, albeit there be no express warranty; but the common law bindeth him not, unless there be a warranty either in deed or in law; for (says he) *caveat emptor.* 1 *Inst.* 102.

And Sir William Blackstone says, with regard to the goodness of the wares purchased, the seller is not bound to answer; but if he that selleth any thing, doth, upon the sale, *warrant* it to be good, the law annexeth a tacit contract to this warranty, that, if it be not so, he shall make compensation to the buyer; otherwise it is an injury to good faith, for which an action on the case will lie to recover damages. 2 *Black.* *Ibid.*

But the warranty must be upon the sale; for if it be made after, and not at the time of the sale, it is a void warranty: for it is then made without any consideration; neither doth the buyer then take the goods upon the credit of the seller. *Ibid.*

Also the warranty can only reach to things in being at the time of the warranty made, and not to things *in futuro*; as that a horse is found at the buying of him, not that he will be found two years hence. *Ibid.*

But

But if the feller knew the goods to be unsound, and hath used any art to disguise them, or if they are in any respect different from what he represents them to the buyer, this artifice shall be equivalent to an express warranty, and the feller is answerable for their goodness. *Ibid.*

A general warranty will not extend to guard against defects that are plainly and obviously the object of one's senses; as if a horse be warranted perfect, and wants a tail or an ear, unless the buyer in this case be blind. *Ibid.*

But if cloth is warranted to be of such a length, when it is not, there an action on the case lies for damages; for that cannot be discovered by sight, but only by a collateral proof, the measuring it. *Ibid.*

Also, if a horse is warranted sound, and he wants the sight of an eye, though this seems to be the object of one's senses, yet as the discernment of such defects is frequently matter of skill, it hath been held that an action on the case lieth to recover damages for this imposition. *Ibid.*

In the case of *Payne against Cave*, E. 29 G. 3. it was determined, that a bidder at an auction, under the usual conditions that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down; for the auctioneer is the agent only of the vendor, and the assent of both parties is necessary to make the contract binding. Every bidding is nothing more than an offer on one side, which is not binding until assented to by the feller, which is signified on his part by knocking down the hammer. *Caf. by Durnf. & East. vol. 3. 148.*

**SALET**, a head piece, or scull of iron, or other metal.

**SALICETAM**, a place where willows grow.

**SALINA**, a salt pit, or place where salt is made.

**SALT**. By several statutes a duty is laid on all salt made in *Great Britain*, and also on foreign salt imported; which is put under the management of the officers of the customs and excise.

**SALTATORIUM**, a deer leap.

**SAL-**

**SALVAGE**, is an allowance made for *saving* ships or goods from danger of seas, enemies, or the like. And by the statute of the 12 *An. fl. 2. c. 18.* where a ship shall be in danger of being stranded or lost, all head officers and others near the sea shall summon as many persons as shall be necessary for assistance; who shall, in case of assistance given, have a reasonable salvage, to be ascertained by three neighbouring justices.

**SALVAGIUS**, wild, savage; as *salvagijs catus*, a wild cat.

**SANCTUARY**. Anciently, if a person accused of any crime (except treason and sacrilege,) had fled to any church or churchyard, and within forty days after went in sackcloth, and confessed himself guilty before the coroner, and declared all the particular circumstances of the offence, and thereupon took the oath in that case provided; namely, that he abjured the realm, and would depart from thenceforth at the port that should be assigned him, and would never return without leave from the king; he, by this means, saved his life, if he observed the conditions of the oath, by going with a cross in his hand, and with all convenient speed, to the port assigned, and embarking: for if, during this forty days privilege of sanctuary, or in his way to the sea side, he was apprehended and arraigned in any court for this felony, he might plead the privilege of sanctuary, and had a right to be remanded, if taken out against his will: but by this abjuration his blood was attainted, and he forfeited all his goods and chattels. The immunity of these privileged places was very much abridged by the statutes 27 *H. 8. c. 19.* and 32 *H. 8. c. 12.* And now, by the statute 21 *J. c. 28.* all privilege of sanctuary and abjuration consequent thereupon, is utterly taken away and abolished. 4 *Black. 332.*

**SATISFACTION**, is the giving of recompence for an injury done; or the payment of money due on bond, judgment, or other security. A sum given in the testator's life-time, is a satisfaction for the same sum left in his will. And it is a rule generally, that a legacy in a will greater, or as great as the debt, shall be taken to be a satisfaction for that debt. 2 *Atk. 48. 301.*

SCAN-

SCANDAL. See SLANDER.

SCANDALUM MAGNATUM, is a slander of the great men of the realm; which, by divers ancient statutes, is made a more heinous offence, than when the like is spoken of a common person: for which offence, an action on the case lies, as well on the behalf of the crown to inflict the punishment of imprisonment on the slanderer, as on behalf of the party to recover damages for the injury sustained.

SCEPP, an ancient measure, the quantity now not known. Baskets in some places are called *skips*; so a bee-hive is called a *bee-skip*.

SCHARNPENNY, from the Saxon *scarn*, which signifies *dung*, was a payment in some manors by the tenants in lieu of folding up their cattle in the lord's yard for the benefit of their dung. In some of the northern counties they still call cow's dung by the name of *cow scarn*; and a *scarny-boughs* denominates a drab, or dirty dunghill wench.

SCHISM, Gr. a rent or division in the church. It is spoken commonly of dissenters separating from the church of *England*.

SCIRE FACIAS, is a judicial writ, and properly lieth after a year and day after judgment given; whereby the sheriff is commanded to summon or give notice (*scire faciat*) to the defendant, that he appear and shew cause why the plaintiff should not have execution. 1 *Inst.* 290.

If judgment is against a testator, there must issue a *scire facias* against the executor, (though within the year,) to shew cause why execution should not be awarded. *Wood. b. 4. c. 4.*

If one recovers against a feme sole, and she is married within the year and day, a *scire facias* must go against the husband to shew cause. *Id.*

SCIREWIGHT, *schiregeld*, a fine imposed by the sheriff on such persons as neglected to attend the county court.

SCOLD.



**SCOLD.** A common scold, *communis rixatrix*, (for our law-latin confines it to the feminine gender,) is a public nuisance to her neighbourhood; for which offence she may be indicted, and, if convicted, shall be sentenced to be placed in a certain engine of correction called the trebucket, castigatory, or cucking stool, which in the Saxon signifies the scolding stool, though now it is frequently denominated the ducking stool; because the residue of the judgment is, that, when she is so placed therein, she shall be plunged in water for her punishment. 4 *Black.* 169.

An indictment of a common scold is good, although it conclude to the common nuisance of *divers* (and not of *all*) the king's subjects; which is contrary to the general rule in other cases. And she may be convicted without setting forth the particulars in the indictment. 1 *Haw.* 198. 2 *Haw.* 227.

**SCOT ALE**, was where any officer of a forest kept an alehouse within the forest, by colour of his office, causing people to come to his house, and there spend their money for fear of his displeasure; which, by transposing the words, may be otherwise called an *ale shot*.

**SCOT AND LOT**, a customary contribution laid upon persons according to their respective abilities; in which respect they are at this day said to pay *scot and lot*.

**SCOTLAND**, by the articles of the union, is now become part of the kingdom of *Great Britain*: the principal of which articles are; that the succession to the monarchy shall be the same in both kingdoms; that the united kingdom shall be represented by one parliament; that sixteen peers be chosen to represent the peerage of *Scotland* in parliament, and forty-five members to sit in the house of commons; that the laws relating to trade, and the excise, shall be the same in both kingdoms; that when *England* raises 2,000,000 *l.* by a land tax, *Scotland* shall raise 48,000 *l.*

**SCUTAGE**, a tax on those that held lands by knights service, towards furnishing the king's army.

SEA.

SEA. The main sea beneath the low water mark, and round *England*, is part of *England*; for there the admiralty hath jurisdiction. 1 *Inst.* 260.

But between the high water mark and low water mark, the common law and the admiral have jurisdiction by turns; one upon the water, the other upon land. But if the water is within a county, the common law claims jurisdiction. 5 *Co.* 107.

Though the land be within the body of a county at the re-flow, yet when the sea is full, the admiral hath jurisdiction upon the water as long as the sea flows; so as at one place there is *divisum imperium* at several times. 3 *Inst.* 113.

By statute 6 *G. 2. c.* 37. maliciously cutting down or destroying any sea banks, is made felony without benefit of clergy.

SEAL. The use of seals, as a mark of authenticity to letters and other instruments in writing, is very ancient, and was allowed to be sufficient without signing the name, which few could do of old time. Among our Saxon ancestors, usually they who could write subscribed their names, and, whether they could write or not, they affixed the sign of the cross; which custom, for those that cannot write, is for the most part kept up to this day. The Normans used sealing only, without writing their names. The impressions of these seals were sometimes a knight on horseback, sometimes other devices; but coats of arms were not introduced into seals, or indeed into any other use, till about the reign of *Richard* the first, who brought them from the croifade in the Holy Land, where they were first invented and painted on the shields of knights, to distinguish the variety of persons of every christian nation who resorted thither; and who could not, when clad in complete armour, be otherwise known or ascertained. 2 *Black.* 305.

*Sealing* of a deed, is an essential part of it; for if a writing is not sealed, it cannot be a deed.

And for a long time, sealing was held to be sufficient without signing, and so the common form of attesting deeds, "sealed and delivered," continues to this day, notwithstanding the statute of frauds and perjuries, 29 *C. 2. c.* 3. revives the Saxon custom, and expressly directs signing, in all grants of lands, and many other species of deeds. *Id.* 305, 306.

But

But on an issue directed out of chancery, whether there was a devise or not, *Raymond*, chief justice, ruled, that sealing a will is assigning within the statute. *Str.* 764.

If a seal is broken off, it will make the deed void; and when several are bound in a bond, the pulling off the seal of the one, makes it void as to the others. 2 *Lev.* 220.

But in a deed of covenants, where the parties covenant severally, the breaking off the seal of one, shall avoid the deed only against himself. But if the deed be rased or obliterated in any part which concerns them all, or in the date, it shall avoid the deed as to them all. *Cro. Eliz.* 408. 546.

It is essential to a corporation or body politic to have a common seal; for though the particular members may express their particular consents to any act by words, or signing their names, yet this does not bind the corporation; it is the fixing of the seal, and that only, which unites the several assents of the individuals which compose the community, and makes one general assent of the whole. 1 *Black.* 475.

#### SEAMEN:

1. For the encouragement of navigation and commerce, and for a supply of seamen for his majesty's navy, it is enacted by the 12 C. 2. c. 18. commonly called the navigation act, that no goods shall be imported into, or exported out of, any part of his majesty's dominions in *Asia*, *Africa*, or *America*, in any vessels but such as belong to the people of *England* or *Ireland*, or are of the built of, and belong to any of the said dominions, and whereof the master and three fourths of the mariners at least are *English*, on pain of forfeiture of both ship and goods. And no alien, not being naturalized, shall exercise the occupation of a merchant or factor in any of the said places.

And no goods of the produce of *Asia*, *Africa*, or *America*, shall be imported into *England* or *Ireland*, in any other vessel but such as belongs only to the people of *England* or *Ireland*, or of his majesty's dominions in *Asia*, *Africa*, or *America*, and whereof the master and three-fourths at least of the mariners are *English*, on pain of like forfeiture of both ship and goods.

And no foreign goods shall be imported but only from the place of their growth or manufacture, or from those ports where they can only, or have been usually first shipped for exportation, on like pain of forfeiture.

But

But by the 13 G. 2. c. 3. his majesty, in time of war, shall have power by proclamation to permit all merchant ships and privateers to be manned with foreign seamen during such war, so as they do not exceed three fourths of the whole number. And service by a foreign seaman, during the time of war, on board any of his majesty's ships of war, or any merchant ship, or privateer, for the space of two years, shall have the effect of a naturalization.

2. And by 13 G. 2. c. 17. every person of the age of fifty-five years, or upwards, and under eighteen, and also every foreigner, who shall serve in any merchant ship or privateer, shall be exempted from being *impressed*.

And every landman who shall betake himself to the sea service, shall be exempted from being impressed for two years from the time of his first going to sea.

And every person, not having before used the sea, who shall bind himself apprentice to the sea service, shall be exempted from being impressed for three years from the time of such binding.

And the admiralty shall make out protections accordingly.

3. A seaman shipwrecked or cast on shore, having a testimonial from a justice of the peace, setting forth the time and place of his landing, and the place to which he is to go, and limiting the time of his passing, shall not be liable to be apprehended as a *vagrant*. 17 G. 2. c. 5.

4. No master of a ship shall set sail, without first agreeing with the seamen for their *wages*, which agreement shall be in writing, and signed by both parties; which said agreement, in case of disputes, the master shall be obliged to produce. 2 G. 2. c. 36.

For convenience of seamen, the admiralty hath been allowed to hold plea for mariners wages. And in this case, in a suit for wages, the seamen may all join; and in that court, the ship itself is liable, as well as the master; and the admiralty hath jurisdiction of their contracts, though they be in writing, and made at land: but if the agreement be special, out of the common way; or if it be under seal, so as to be more than a parol agreement; that court hath no jurisdiction, but the common law shall have cognizance. *Burr. Mansf.* 1948. 1950.

But it was never allowed that the *master* should sue in the admiralty; nor is it reasonable, where he commences the



voyage as master; for though the mariners contract upon the credit of the ship, the master contracts on the credit of the owners. 1 *Salk.* 33.

To prevent desertion, no master shall advance to any seaman above half his wages, while beyond the sea, on pain of forfeiting double the sum advanced, to be recovered in the admiralty by the informer. 8 *G. c.* 24.

And if the ship be lost or taken before the end of the voyage, the wages are not payable: and this is, in order to oblige the seamen to use their utmost endeavours to preserve the ship. *Burr. Mansf.* 1845.

5. A ship was taken by a French privateer, and the master ransomed her for 300*l.* and was carried prisoner to *Dunkirk*. He libelled in the admiralty against the ship for payment of the money, and it was held that he well might; for the taking and pledge being on the high seas, the ship, by the law of the admiralty, shall answer for the redemption of the master by his own contract. *L. Raym.* 24.

6. The master may hypothecate or pawn the ship, but he cannot sell. And if he be driven by tempest into port, and there borrows money to refit, the ship is liable to condemnation in the admiralty, notwithstanding that the contract was made at land, for the cause of pledging arose upon the sea. *L. Raym.* 152.

7. A seaman may make a *nuncupative testament*, without the strict formalities required of others by the 29 *C. 2. c.* 3.

SECRETARY OF STATE, is a great officer under the king; but it doth not seem, that in that capacity he is in any considerable degree the object of our laws, or hath any very important share of magistracy conferred upon him; except that he is allowed the power of commitment, in order to bring offenders to trial. 1 *Black.* 338.

SECTA, *suit*, or *action*. This word (*à sequendo*) anciently signified the *followers* or witnesses of the plaintiff. For in former times, the law would not put the defendant to the trouble of answering the charge, till the plaintiff had made out at least a probable case. But the actual production of the *suit*, the *secta*, or *followers*, is now totally disused, though the form of it still continues in the end of the declaration, which always concludes, *and thereupon he bringeth suit*. 3 *Black.* 295.

SECTA AD MOLENDINUM, suit to another's mill; where the persons resident in a particular place, by usage, time out of mind, have been accustomed to grind their corn at a certain mill; and afterwards any of them go to another mill, and withdraw their suit from the ancient mill: and for this injury, the owner shall have a writ *de secta ad molendinum*, commanding the defendant to do his suit at that mill, or shew good cause to the contrary. In like manner, a man may have a writ of *secta ad fernum*, for suit due to his public oven or bakehouse, or to his *torrale*, his kiln, or malthouse; when a person's ancestors have erected a convenience of that sort for the benefit of the neighbourhood, upon an agreement proved by immemorial custom, that all the inhabitants should use and resort to it when erected. An action upon the case will also lie, to repair the party injured in damages. 3 Black. 235.

SECTA CURLE, suit of court, a service performed by the tenant at the lord's court.

SECURITAS PACIS, is a writ that lies for one that is threatened with bodily harm by another, and is usually granted out of the chancery or king's bench, against peers of the realm, or other offenders of high degree, requiring the justices of the peace, or others to whom it is directed, to take recognizance from the persons complained of, that they will keep the peace towards the complainant, and certify the same into the court from whence the writ did issue.

SE DEFENDENDO, is where one who hath no other possible means of preserving his life from one who combats with him on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. And not only he, who upon an assault, retreats to a wall, or some such strait, beyond which he can go no further before he kills another, is judged by the law to act upon unavoidable necessity; but also he, who being assaulted in such a manner, and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all. 1 Harw. 75.

SEISIN, in the common law, signifies possession: so to seize, is to take possession of a thing. There is a seisin in fact, and

and a seisin in *law*: a seisin in *fact* is, when an actual possession is taken; a seisin in *law* is, where lands descend, and one hath not actually entered on them. 1 *Inst.* 31.

SELF DEFENCE. See SE DEFENDENDO.

SELF MURDER. See FELO DE SE.

SEQUESTER, is a term used in the civil law for renouncing; as when a widow comes into court and disclaims having any thing to do, or to intermeddle with her deceased husband's estate, she is said to sequester.

SEQUESTRATION, signifies the separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it; and it is twofold, voluntary, and necessary. Voluntary, is that which is done by consent of each party; necessary, is what the judge of his authority doth, whether the party will consent or not.

There is also a sequestration in the court of chancery against a person for non-appearance upon a bill exhibited, or for not yielding to a decree, or the like. In which case, a commission is usually directed to certain persons therein named, empowering them to seize the defendant's real and personal estate into their hands; or it may be, some particular part or parcel of his lands, and to receive and sequester the rents and profits thereof, until the defendant shall have answered the plaintiff's bill, or performed some other matter which has been ordered and enjoined him by the court, for not doing whereof he is in contempt. *Curf. Canc.* 89.

A sequestration is also a kind of execution for debt, especially in the case of a beneficed clerk, of the profits of the benefice, to be paid over to him that had the judgment, till the debt is satisfied.

SERJEANT, is a word diversely used, and applied to sundry offices and callings. First, a *serjeant at law*, *serviens ad legem*, which is the highest degree taken in the common law. The court of common pleas is set apart for serjeants to plead therein, yet they are not so limited as to be restrained from pleading in any other court. Of these, one or more are especially called the *king's serjeants*, to plead for him in all his causes, especially in cases of criminal jurisdiction. There

There are also *serjeants at arms*, whose office is to attend on the person of the king, to arrest persons of condition offending. They may not be above thirty in number, two of whom by the king's allowance attend on the two houses of parliament. One of them also attends on the lord high chancellor in chancery, one on the lord treasurer, one on the lord mayor of London, on extraordinary solemnities. They were anciently called *virgatores*, because they carried silver rods gilt. There are likewise *serjeants at mace*, in divers towns corporate; who with their maces attend on the mayor or other head officer. Heretofore, there were also *serjeants of the forest*, *serjeants of hundreds*, *serjeants of manors*, *serjeants of the peace*; the word *serjeant*, *serviens*, being indeed nothing but another word for *servant*, or rather indeed the same word varied a little in the orthography.

SERJEANTY, *serjeantia*, *servicium*, signifies in law a service that cannot be due from a tenant to any lord, but to the king only; and it is of two kinds, *grand serjeanty* and *petit serjeanty*. *Grand serjeanty*, is where a person holds his lands of the king by such services as he ought to do in person; as to carry the king's banner, or his lance, or to carry his sword before him at his coronation, or to do other like services: and it is called *grand serjeanty*, because it is a greater and more worthy service than the service in the common tenure of escuage. *Petit serjeanty*, is where a man holds his land of the king, to render to him yearly, a bow, a sword, a lance, a pair of gloves of mail, a pair of gilt spurs, or such other small things belonging to war. And such service is but socage in effect, because such tenant by his tenure, ought not to go nor do any thing in his proper person, but to render and pay yearly certain things to the king, as if a man ought to pay a rent. *Litt.* § 153. 160. Though all tenures are turned into common socage, by the 12 C. 2. c. 4. yet the honorary services of grand serjeanty still remain, being therein excepted.

#### SERVANTS:

1. SERVANTS are either *menial*, who are domestics, living *intra mœnia*, within the walls of the house; or they are such as are no part of the master's family, but are hired to do some particular kinds of business.



2. If the hiring be general, without any particular time limited, the law construes it to be a hiring for a year; upon a principle of natural equity, that a servant shall serve, and the master maintain him, throughout all the revolutions of the respective seasons, as well when there is work to be done, as when there is not. But the contract may be made for a longer or smaller time. 1 *Black.* 425.

3. If a servant be under age, his agreement with the master to his disadvantage shall not prejudice him; but if it be to his advantage, it is good in law. *Dalt. c. 58.*

4. If a woman who is a servant shall marry, yet she shall serve out her time, and her husband cannot take her out of her master's service. *Dalt. c. 58.*

5. If any person hire or retain my servant, being in my service, for which the servant departeth from me, and goeth to serve the other, I may have an action for damages against both the new master and the servant, or either of them; but if the new master did not know that he is my servant, no action lies, unless he afterwards refuse to restore him upon information and demand. 1 *Black.* 429.

6. If a servant fall sick, or be hurt or disabled by the act of God, or in doing his master's business, his master may not put him away, nor abate any part of his wages. *Dalt. c. 58.*

7. A servant assaulting his master or other person having oversight of him, shall be imprisoned for a year, or such less time as two justices before whom he shall be convicted shall think fit. 5 *El. c. 4.*

8. A master is allowed by law, with moderation to chastise his servant being under age; but if the master or mistress beats any servant of full age, it may be a good cause of discharge, on complaint to the justices. 1 *Black.* 428.

9. A master may abet and assist a servant in any action at law against a stranger: whereas, in general, it is an offence against public justice to encourage suits and animosities, by helping to bear the expence of them, and is called in law maintenance. *Id.* 429.

10. A master may bring an action against any man for beating or maiming his servant; but in such case, he must assign, as a special reason for so doing, his own damage by the loss of his service, and this loss must be proved upon the trial: and the servant also may maintain an action for the battery or imprisonment, 3 *Black.* 142.

11. So a master may justify an assault and battery in defence of his servant, for otherwise he might lose his service; as a servant may justify an assault and battery in defence of his master. *Wood. b. 1. c. 6.*

12. The master is indictable for a nuisance done by his servant; as for throwing dirt in the highway; and the servant also is indictable; for a servant is not excused the commission of any crime by the command or coercion of his master. *1 Haw. 3.*

If an innkeeper's servant rob his guests, the master is bound to restitution. *1 Black. 435.*

If a smith's servant lames a horse in shoeing him, an action lies against the master, and not against the servant. *Id. 431.*

13. If I pay money to a banker's servant, the banker is answerable for it: but if I pay it to a man's servant, whose usual business it is not to receive money for his master, and he embezzles it, I must pay it over again. *Id. 430.*

So if a steward lets a lease of a farm without the owner's knowledge, the owner must stand to the bargain; for this is the steward's business. *Id.*

A wife, a friend, a relation, that use to transact business for a man, are to this purpose his servants, and the principal must answer for their conduct; for the law implies, that they are under a general command; and without such a doctrine as this, no mutual intercourse between man and man could subsist with any tolerable convenience. *Id.*

If I usually deal with a tradesman by myself, or constantly pay him ready money, I am not answerable for what my servant takes up upon trust; for here is no implied order to the tradesman to trust my servant: but if I usually send him upon trust, or sometimes on trust, and sometimes with ready money, I am answerable for all he takes up; for the tradesman cannot possibly distinguish when he comes by my order, and when upon his own authority. *Id.*

14. Formerly, if a servant kept his master's fire negligently, so that his neighbour's house was burned down thereby, an action lay against the master: but now, by *6 An. c. 3.* no action shall be brought against any in whose house a fire shall accidentally begin; for their own loss is sufficient punishment for their own, or their servant's carelessness: but if the fire happens through a servant's negligence, such servant shall forfeit 100*l.* to be distributed among the sufferers; and in default of payment, shall be

committed to some workhouse, and there kept to hard labour for eighteen months.

15. If a servant is robbed of the master's money, the master or the servant may bring the action against the hundred. *Wood. b. 1. c. 6.*

16. If a servant sells his master's horse or other goods in a fair or market, with secret faults which the master knew of, the buyer can have no advantage against the master, unless he bid the servant sell to that person certain. *Wood. b. 1. c. 6. 1 Roll's Abr. 95.*

17. By hiring and service for a year, a servant gains a settlement in the parish where he served the last forty days.

18. Disputes concerning wages or misbehaviour, between master and servant, are in most cases determinable before justices of the peace.

19. No master can put away his servant, or servant leave his master, either before, or at the end of his term, without a quarter's warning, unless upon reasonable cause to be allowed by a justice of the peace: but they may part by consent, or make a special contract. *5 El. c. 4.*

20. The contract is not dissolved by the death of the master; the servant is obliged to serve the executor, and the executor is to pay him. *Burr. Settle. Cas. 182.*

And by the 25 G. 3. c. 43. and 25 G. 3. c. 70. certain duties are imposed on several descriptions of male and female servants, which are to be under the management of the commissioners of the window duties.

**SESSION OF PARLIAMENT**, is the sitting of the parliament on the great affairs of the nation; which session continues till it be either prorogued or dissolved, and breaks not off by adjournment; therefore, upon an adjournment, all things continue in the state they were in before the adjournment; but a prorogation puts an end to the session: in which case, such bills as are begun, and not perfected, must be resumed *de novo* (if at all) in a subsequent session. *4 Inst. 27.*

**SESSION OF THE PEACE**, is a court of record, holden before two or more justices, whereof one is of the quorum, for execution of the authority given to them by the commission of the peace, and certain acts of parliament. The *general sessions* and *quarter sessions* are not synonymous; for

for the *quarter sessions* are a species only of the *general sessions*; and such sessions only are properly called *general quarter sessions*, which are holden in the four quarters of the year, in pursuance of the statute 2 *Hen.* 5. and any other sessions, holden at any other time for the general execution of the justices authority; which, by the said statute, they are authorised to hold oftener than at the times therein specified, if need be, may be properly called *general sessions*; and those holden on a special occasion, for the execution of some particular branch of their authority, are called *special sessions*. 2 *Haw.* 42.

The jurisdiction of the quarter sessions extends to the trying and determining all felonies and trespasses whatsoever, though they seldom, if ever, try any greater offence than small felonies within the benefit of clergy; their commission providing, that if any case of difficulty arises, they shall not proceed to judgment but in the presence of one of the judges. 4 *Black.* 271.

A SET-OFF, is when the defendant acknowledges the justice of the plaintiff's demand on the one hand, but on the other sets up a demand of his own, to counterbalance that of the plaintiff, either in the whole, or in part; as if the plaintiff sues for 10*l.* due on a note of hand, the defendant may set off 9*l.* due to himself for merchandize sold to the plaintiff. 3 *Black.* 304.

This depends on the statutes 2 *G.* 2. c. 22. and 8 *G.* 2. c. 24. which enact, that where there are mutual debts between the plaintiff and defendant, one debt may be set against the other, and either pleaded in bar, or given in evidence upon the general issue at the trial; which shall operate as payment, and extinguish so much of the plaintiff's demand. *Id.* 305.

If the set-off is pleaded, the defendant must pay the remaining balance into court. *Id.* 304.

SEVERAL *action*, is where two or more persons are severally charged in any action.

So a *several covenant*, is a covenant by two or more severally; and in a deed where the covenants are several between divers persons, they are as several deeds written on one piece of parchment.

*Several fishery*, is an exclusive right of fishing in a public river.

*Several*



*Several inheritance*, is an inheritance conveyed so as to descend, or come to two persons severally by moieties.

*Several tail*, is that whereby land is given and intailed severally to two.

**SEVERALTY**, estate in, is that which is holden by the tenant in his own right only, without any other person being joined or connected with him in point of interest, during the continuance of his estate. 2 *Black.* 179.

**SEVERANCE** of *joint tenancy*, may be made by destroying any of its constituent *unities*. 1. That of *time*, which respects only the original commencement of the joint estate, cannot indeed (being now past) be affected by any subsequent transactions. But, 2. The jointenants estate may be destroyed without any alienation, by merely *disuniting* their possessions; and therefore, if two jointenants agree to part their lands, and hold them in severalty, they are no longer jointenants; also, one jointenant may, by writ of partition, compel another to divide. 3. By destroying the unity of *title*; as if one jointenant alienes and conveys his estate to a third person, here the jointenancy is severed, and turned into a tenancy in common. 4. By destroying the unity of *interest*. And therefore, if there be two jointenants for life, and the inheritance is purchased by or descends upon either, it is a severance of the jointure.

*Severance of corn*, is the cutting and carrying it off from the ground: and sometimes the setting out the tithes from the rest of the corn, is called severance.

**SEWER**, is a fresh water trench, or little river, defended with banks on both sides, to carry the water into the sea, and thereby preserve the land against inundations.

Commissions of sewers are appointed under the great seal. Formerly, they were wont to be granted *pro re natâ* at the pleasure of the crown, but now at the discretion and nomination of the lord chancellor, lord treasurer, and chief justices, pursuant to the statute 23 *H. 8. c. 5.* 3 *Black.* 73.

Their jurisdiction is to overlook the repairs of sea banks, and sea walls, and the cleansing of rivers, public streams, ditches, and other conduits, whereby any waters are carried off;

off; and is confined to such county or particular district as the commission shall expressly name. *Id.*

Their court is a court of record; and they may fine and imprison for contempts, and in the execution of their duty may proceed by jury, or upon their own view; and may take order for the removal of any annoyances, or the safeguard and conservation of the sewers within their commission, either according to the laws and customs of *Romney marsh*, or otherwise at their own discretion. *Id.*

They may also assess such rates, or scots, upon the owners of lands within their district, as they shall judge necessary; and if any person refuses to pay them, the commissioners may levy the same by distress of his goods and chattels; or they may by the statute 23 *Hen. 8. c. 5.* sell his freehold lands, (and by the 7 *An. c. 10.* his copyhold also,) in order to pay such scots or assessments. *Id.* 74.

But their conduct is under the control of the court of king's bench, which will prevent or punish any illegal or tyrannical proceedings. *Id.*

To pull down or destroy any lock, sluice, floodgate, or other works, on a navigable river, is, by the 8 *G. 2. c. 20.* made felony without benefit of clergy. And by 4 *G. 3. c. 12.* damaging any such works, is made felony and transportation for seven years.

SEXTON, *segsten, segerstane, (sacrista,)* is the keeper of the holy things belonging to the divine worship. He is a person so far regarded by the common law, as one who hath a freehold in his office; and therefore, though he may be punished, yet he cannot be deprived by ecclesiastical censures. 1 *Black. 395.*

Also a part of the office of a sexton is digging graves. *Caf. by Durnf. and East. vol. 3. 118.*

SHAW, a grove of trees, a wood.

SHEEP. By the 14 *G. 2. c. 6.* stealing or killing any sheep or lamb, with intent to steal the carcase, or any part thereof, is felony without benefit of clergy; and a reward of 10*l.* is given to the prosecutor.

And by the 28 *G. 3. c. 38.* every person who shall export any live sheep or lambs, shall forfeit 3*l.* for every sheep or lamb, and shall also suffer solitary imprisonment for three months, without bail, and until the forfeiture be paid;  
but

but not to exceed twelve months for such non-payment. And for every subsequent offence 5 *l.* a piece, and a like imprisonment for six months, and until the forfeiture be paid; but not to exceed two years for the non-payment thereof. And all ships or vessels employed therein shall be forfeited.

### SHERIFF:

1. SHERIFF, *shire-reeve*, the reeve, bailiff, or officer of the shire, is an officer of great antiquity in this kingdom. He is called in Latin *vice-comes*, as being deputy of the earl or *comes*, to whom the custody of the county was committed at the first division of the kingdom into shires. But the earls in process of time, by reason of their high employments and attendance on the king's person, not being able to transact the business of the county, were delivered of that burden, reserving to themselves the honour, but the labour was laid on the sheriff. So that now the sheriff doth all the king's business in the county; and though he be still called *vice-comes*, yet he is intirely independent of, and not subject to the earl; the king by his letters patent committing the custody of the county to the sheriff, and to him alone.  
1 *Black.* 339.

2. By several statutes, none shall be sheriff, except he have sufficient land within the county to answer the king and his people. And by the militia act, 26 *G. 3. c.* 107. no man, during the time that he is acting as a *militia officer*, shall be obliged to serve the office of sheriff. Also an *attorney* is exempted from the office of sheriff, by reason of his attendance on the courts at *Westminster*. *Burr. Mansf.* 2109.

3. At the common law, the sheriff was chosen by the county; but this was afterwards altered by statute; and the custom now is, that the great officers of state, together with the judges, meet in the exchequer chamber, and there agree upon three persons to be proposed to the king, who afterwards appoints one of them to be sheriff.

4. At the entering upon his office, the sheriff shall take the following oath, to be administered in pursuance of a writ of *dedimus potestatem*: "I *A. B.* do swear, that I will well and truly serve the king's majesty in the office of sheriff, in the county of \_\_\_\_\_, and promote his majesty's profit in all things that belong to my office, as far as I legally can or may. I will truly preserve the king's rights, and all that belongeth to the crown. I will not

" assent to decrease, lessen, or conceal the king's right, or the  
 " rights of his franchises. And whensoever I shall have  
 " knowledge that the rights of the crown are concealed or  
 " withdrawn, be it in lands, rents, franchises, suits, or ser-  
 " vices, or in any other matter or thing, I will do my utmost  
 " to make them be restored to the crown again; and if I  
 " may not do it myself, I will certify and inform the king  
 " thereof, or some of his judges. I will not respite or delay  
 " to levy the king's debts, for any gift, promise, reward, or  
 " favour, where I may raise the same without great griev-  
 " ance to the debtors. I will do right, as well to poor as  
 " to rich, in all things belonging to my office. I will do no  
 " wrong to any man, for any gift, reward, or promise, or for  
 " favour or hatred. I will disturb no man's right, and will  
 " truly and faithfully acquit, at the exchequer, all those of  
 " whom I shall receive any debts or duties belonging to the  
 " crown. I will take nothing whereby the king may lose,  
 " or whereby his right may be disturbed, injured, or delayed.  
 " I will truly return, and truly serve all the king's writs, ac-  
 " cording to the best of my skill and knowledge. I will take  
 " no bailiffs into my service, but such as I will answer for,  
 " and will cause each of them to take such oaths as I do,  
 " in what belongeth to their business and occupation. I will  
 " truly set and return reasonable and due issues of them that  
 " be within my bailiwick, according to their estate and cir-  
 " cumstances, and make due panels of persons able and suf-  
 " ficient, and not suspected, or procured, as is appointed by  
 " the statutes of this realm. I have not sold or let to farm,  
 " nor contracted for, nor have I granted or promised for re-  
 " ward or benefit, nor will I sell or let to farm, or contract  
 " for, or grant for reward or benefit, by myself, or any other  
 " person for me or for my use, directly or indirectly, my  
 " sheriffwick, or any bailiwick thereof, or any office belong-  
 " ing thereunto, or the profits of the same, to any person or  
 " persons whatsoever. I will truly and diligently execute  
 " the good laws and statutes of this realm; and in all things  
 " well and truly behave myself in my office, for the honour  
 " of the king, and the good of his subjects, and discharge the  
 " same according to the best of my skill and power: So help  
 " me God." 3 G. c. 15.

5. After he is sworn, he ought at, or before the next  
 county court to deliver a writ of discharge to the old  
 sheriff, who is to set over all the prisoners in the gaol, seve-  
 rally by their names (together with all the writs) precisely by  
 view



view and indenture between the two sheriffs; wherein must be comprehended all the actions which the old sheriff hath against every prisoner, though the executions are of record. And till the delivery of the prisoners to the new sheriff, they remain in the custody of the old sheriff, notwithstanding the letters patents of appointment, the writ of discharge, and the writ of delivery. Neither is the new sheriff obliged to receive the prisoners, but at the gaol only. But the office of the old sheriff ceases, when the writ of discharge cometh to him. 3 Co. 72.

6. As keeper of the king's peace, the sheriff is the first man in the county, and superior in rank to any nobleman therein, during his office. He may apprehend and commit to prison all persons who break the peace, or attempt to break it; and may bind any one in a recognizance to keep the king's peace. He may, and is bound *ex officio* to pursue and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the king's enemies when they come into the land: and for this purpose, as well as for keeping the peace and pursuing felons, he may command all the people of his county to attend him; which is called the *posse comitatus*, or power of the county; which summons, every person above fifteen years of age, and under the degree of a peer, is bound to attend upon warning, on pain of fine and imprisonment. Yet he cannot exercise the office of a justice of the peace, for then this inconvenience would arise, that he should command himself to execute his own precepts. 1 Black. 343.

7. He hath jurisdiction in causes both criminal and civil; for which purpose he hath two courts; his *tourn* for criminal causes, which is therefore the king's court; the other is his *county court*, for civil causes; and this is the court of the sheriff himself.

8. The *under-sheriff* is appointed by the high sheriff, because he shall answer for him; and he shall take the like oath as the high sheriff, *mutatis mutandis*. 3 G. c. 15.

The under-sheriff usually performs all the duties of the office; a very few only excepted, where the personal presence of the high sheriff is necessary. But no under-sheriff shall abide in his office above one year; nor shall he practise as attorney during the time he continues in such office. 1 Black. 345.

9. The *bailiffs* also are appointed by the sheriff; and every *bailiff*, when he gives security upon entering into his office, shall

shall make it part of the condition of such security, that he will deliver a copy of the clauses in the statute of 32 G. 2. c. 28. concerning the carrying of prisoners for debt to alehouses. And he shall take the following oath of office, before a judge of assize or two justices of the peace: "I  
 " A. B. shall not use or exercise the office of bailiff corruptly  
 " during the time that I shall remain therein, neither shall  
 " or will accept, receive, or take, by any colour, means, or  
 " device whatsoever, or consent to the taking of any manner  
 " of fee or reward of any person or persons, for the impanel-  
 " ling, or returning of any inquest, jury, or tales, in any  
 " court of record, for the king, or betwixt party and party,  
 " above 2s. or the value thereof, or such fees as are allowed  
 " and appointed for the same by the laws and statutes of this  
 " realm, but will, according to my power, truly and indifferently,  
 " with convenient speed, impanel all jurors, and  
 " return all such writ or writs, touching the same, as shall  
 " appertain to be done by my duty or office, during the time  
 " that I shall remain in the said office: So help me God."

27 Eliz. c. 12.

10. By several statutes, the sheriffs have the keeping of gaols. And in all *civil* causes, as in cases of imprisonment for debt, the sheriff or gaoler, at the election of the party, shall be answerable for escapes suffered by the gaoler; but if the gaoler suffer a *felon* voluntarily to escape, this, inasmuch as it reacheth to life, is felony only in the gaoler; but the sheriff may be indicted, fined, and imprisoned. 1 *Hale's Hist.* 597.

11. Where the sheriff levies money on a *fieri facias*, the plaintiff may have an action of debt against him for the money, because it was received by him to the plaintiff's use, and the defendant is discharged of it; and it lies against his executors if he die. 3 *Salk.* 323.

12. In causes where the king is party, and in causes criminal, the sheriff or his officer may break open a door to execute process, after demand and refusal to open, and signifying the cause of his coming; but not in a civil cause at the suit of a subject, unless where the execution is once lawfully begun; as where the outdoors are open, the sheriff entering may proceed and break open inner doors. *Fost.* 319.

13. By the 13 & 14 G. 2. c. 21. no sheriff (except of London, Middlesex, Westmorland, and towns which are counties of themselves) shall keep any tables at the assizes, except for his own family or retinue, or give any present to the judges for their provision, or any gratuity to their officers or servants,

servants, nor shall have more than 40 men in livery, nor less than twenty in *England* and twelve in *Wales*.

14. By several old statutes, sheriffs are to continue in their office no longer than one year, except in *London*, *Middlesex*, and towns being counties of themselves, and where the office is a man's freehold or inheritance: yet it hath been said, that a sheriff may be appointed during the king's pleasure; and so is the form of the writ. And none that hath been sheriff, shall be so again within three years, if there be other sufficient. 1 *Ric. 2. c. 11.*

15. If the sheriff shall die before his office shall be expired, the under-sheriff shall execute the same in the deceased sheriff's name, till a new sheriff be sworn; and shall be answerable for the execution thereof as the deceased sheriff would have been. 3 *G. c. 15.*

**SHIPS.** Wilfully destroying a ship, with intent to prejudice the insurers; plundering a ship in distress; stealing goods of the value of 40*s.* from on shipboard; burning or destroying any of his majesty's shipping or stores; are, by a variety of statutes, made felony without benefit of clergy.

**SHIREMAN**, was anciently the governor of the shire; the *earl* having been so denominated from his presiding over, and having the custody of the shire committed to him.

**SHOOTING** at any person, in any dwelling-house or other place, though death doth not ensue, is felony without benefit of clergy, by the black act, 9 *G. c. 22.*

**SHOP-BOOK**, is not allowed of itself to be given in evidence for the owner; but a servant who made the entry may have recourse to it to refresh his memory: and if such servant (who was accustomed to make those entries) be dead, and his hand be proved, the book may be read in evidence. But by the statute 7 *J. c. 12.* this species of evidence is confined to such transactions as have happened within one year before the action brought; unless between merchant and merchant in the usual intercourse of trade. 3 *Black. 368.*

**SHOPLIFTERS**, are those that steal goods privately out of *shops*; which being of the value of 5*s.* though no person be in the shop, is felony without benefit of clergy.

SHOR-

**SHORTLING** and **MORTLING**, are words to distinguish *fells* of sheep; *shortling* being the fells after the fleeces are *shorn* or clipped off; and *mortling*, the fells flead off after they *die* or are killed.

**SHROUD**; stealing of it is felony; for the property thereof remains in the executor, or whoever was at the charge of the funeral. But stealing the corpse itself, which has no owner, (though a matter of great indecency,) is not felony, unless some of the grave cloaths be stolen with it. 2 *Black.* 419. 4 *Black.* 236.

**SHRUBS**, destroying. By the 6 *G. c.* 36 & 48. and 13 *G. 3. c.* 33. wilfully to spoil or destroy any trees, roots, shrubs, or plants, is, for the two first offences, liable to pecuniary penalties; and for the third, the offender shall be guilty of felony, and transported for seven years. And if it is by night, the stealing of any of them to the value of 5*s.* is felony for the first offence.

**SIDESMEN**, or more properly *synodsmen*, are church officers, anciently appointed to assist the churchwardens in making presentments of ecclesiastical offences at the bishop's *synod* or visitation. By *Can.* 90. they are to be chosen yearly in *Easter* week, by the minister and parishioners, if they can agree; otherwise to be appointed by the ordinary of the diocese. But for the most part this whole office is now devolved upon the churchwardens.

**SIGNIFICAVIT**, is a writ issuing out of chancery, upon a certificate given by the ordinary of a person's standing excommunicate by the space of forty days, for the imprisoning him till he submit himself to the authority of the church. And it was so called, because *significavit* is an emphatical word in the writ. There are also some other writs in the register of the same denomination, setting forth that *signification* had been made to the court in certain particular cases: but this concerning excommunication is the writ that generally obtains the name of a *significavit*, and is the same with that which is otherwise termed an *excommunicato capiendo*.

**SIGNING**, of deeds, is not of very great antiquity in this kingdom, sealing alone having been held to be sufficient for that purpose; and so the common form of attesting deeds,



“sealed and delivered,” continues to this day, notwithstanding the statute of frauds and perjuries, 29 C. 2. c. 3. expressly directs *signing* in all grants of lands, and many other species of deeds; in which, therefore, signing seems to be now as necessary as sealing, though it hath been sometimes held that the one includes the other. 2 *Black.* 306.

**SIMILITUDE** of *hand-writing*. Though from the reversal of colonel *Sydney's* attainder by act of parliament in 1689, it may be collected, that the mere similitude of hand-writing in two papers shewn to a jury, without other concurrent testimony, is no evidence that both were written by the same person; yet, undoubtedly, the testimony of witnesses, well acquainted with the party's hand-writing, that they believe the paper in question to have been written by him, is evidence to be left to a jury. 4 *Black.* 358.

**SIMONY**, is a corrupt contract for a presentation to any benefice of the church, for money, gift, or reward. It is so called from the resemblance it is said to bear to the sin of *Simon Magus*, though the purchasing of holy orders seems to approach nearer to his offence. It was by the canon law a very grievous crime; unto which, divers acts of parliament have added other restrictions.

By one of the canons of 1603, every person, before his admission to any ecclesiastical promotion, shall, before the ordinary, take an oath, that he hath made no simoniacal payment, contract, or promise, directly or indirectly, by himself or any other, for the obtaining of the said promotion; and that he will not afterwards perform or satisfy any such kind of payment, contract, or promise, made by any other without his knowledge or consent.

By the statute 31 *El.* c. 6. if any person shall, for any reward or promise thereof, directly or indirectly give or bestow any benefice with cure of souls, dignity, prebend, or living ecclesiastical, the same shall be void, and the king shall present for that turn: and every person giving or taking such reward, shall forfeit double the value of one year's profit of the benefice: and every person accepting such benefice simoniacally, shall be disabled to have or enjoy the same.

And by the 12 *An. 8.* 2. c. 12. if any person, for money or profit, shall procure in his own name, or in the name of any other, the next presentation to any living ecclesiastical, and

and shall be presented thereupon, this is declared to be a simoniacal contract.

General bonds of resignation upon notice, have been held not to be within these statutes; because there doth not appear a corrupt or simoniacal contract in the condition; and because a man may bind himself to resign upon good and valuable reasons; as in case of plurality, or non-residence, or when the patron's son is of age, and qualified to take the benefice: but if it had been for a lease of the glebe, or tithes, or a sum of money, that had been within the statutes. 2 *Black.* 680.

#### SIMPLE CONTRACT:

DEBTS by *simple contract*, (in opposition to debts by specialty, or *special contract*,) are such where the contract upon which the obligation arises, is neither ascertained by matter of record, nor yet by deed or special instrument, but by mere oral evidence, or by notes unsealed, which are only better than a verbal promise, by being more capable of proof: whereas debts by specialty are such whereby the contract is ascertained by deed or instrument under seal. 2 *Black.* 462.

SINE-CURE, is where there is both rector and vicar in the same church; in which case, the duty commonly rests in the vicar, and the rectory is what is called a *sine-cure*. But no church where there is but one incumbent is properly a *sine-cure*. A church may be down, or the parish become destitute of parishioners; but still this is not a *sine-cure*, for the incumbent is under an obligation of performing divine service, if the church shall be rebuilt, or the parish become inhabited.

SINKING FUND, is so denominated from its having been originally destined to *sink* and lower the national debt. It is a provision made by parliament, consisting of surpluses of other funds, appropriated for payment of the public debts of the nation. Many acts of parliament have been made for applying the growing produce thereof; and money is often borrowed thereupon, towards raising the present supplies for the current service.

SLANDER, is the defaming of a man in his reputation, profession, or livelihood: as if a man, maliciously and falsely, utter any slander or false tale of another, which may either endanger him in law, by impeaching him of some heinous crime, as to say that a man hath poisoned another, or is perjured; or which may exclude him from society, as to charge him with having an infectious disease; or which may impair or hurt his trade or livelihood, as to call a tradesman a bankrupt. Words spoken in derogation of a peer, a judge, or other great officer of the realm, which are called *scandalum magnatum*, are held to be still more heinous; and though they be such as would not be actionable in the case of a common person, yet, when spoken in disgrace of the great men of the realm, they amount to an atrocious injury, which is redressed by action on the case, founded on many ancient statutes, as well on behalf of the crown to inflict the punishment of imprisonment on the slanderer, as on behalf of the party to recover damages for the injury sustained. Words also tending to scandalize a magistrate, or person in a public trust, are reputed more highly injurious than when spoken of a private man.

3 Black. 124.

For scandalous words of any of the kinds above-mentioned, an action on the case may be had, without proving any particular damage; but with regard to words that do not thus apparently, and upon the face of them, import such defamation as will of course be injurious, it is necessary that the plaintiff should aver some particular damage to have happened; which is called laying his action with a *per quod*; as if I say, that such a clergyman is a bastard, he cannot for this bring an action against me, unless he can shew some special loss by it; in which case, he may bring his action against me for saying he was a bastard, *per quod* he lost the presentation to such a living. In like manner, to slander another man's title, by spreading such injurious reports, as, if true, would deprive him of his estate, (as to call the issue in tail, or one who hath land by descent, a bastard,) is actionable, provided any special damage accrues to the proprietor thereby; as if he loses an opportunity of selling the land. *Id.*

But mere scurrility, or opprobrious words, which neither in themselves import, nor are in fact attended with any injurious effects, will not support an action. So scandals, which

which concern matters merely spiritual, as to call a man heretic or adulterer, are cognizable only in the ecclesiastical court, unless any temporal damage ensues, which may be a foundation for a *per quod*. So words of heat and passion, as to call a man rogue and rascal, if productive of no ill consequence, and not of any of the dangerous species before mentioned, are not actionable; neither are any reflecting words made use of in legal proceedings, and pertinent to the cause in hand, a sufficient cause of action for slander. Also if the defendant be able to justify, and prove the words to be true, no action will lie, even though special damage hath ensued; as if I can prove the tradesman a bankrupt, this will destroy his action; for though there may be damage sufficient accruing from it, yet, if the fact be true, it is damage without an injury; and where there is no injury, the law gives no remedy. *Id.*

Finally, by the 21 *J. c.* 16. actions upon the case for slander, shall be brought within two years after the words spoken, and not after: and if the jury find the damages under 40*s.*, the plaintiff shall have no more costs than damages.

**SLAVERY.** A *slave*, or a negro, the moment he lands in *England*, falls under the protection of the laws, and so far becomes a freeman. Yet with regard to any right which the master may have lawfully acquired to his perpetual service, that will remain exactly in the same state as before: for this is no more than the same state of subjection for life, which every apprentice submits to for the space of seven years, or sometimes for a longer term. 1 *Black.* 127. 424.

Hence it follows, that the infamous and unchristian practice of withholding baptism from negro servants, lest they should thereby gain their liberty, is totally without foundation, as well as without excuse. The law of *England* acts upon general and extensive principles: it gives liberty, rightly understood, that is, protection, to a Jew, a Turk, or a Heathen, as well as to Christians; and it will not dissolve a civil obligation between master and servant, on account of the alteration of faith in either of the parties: but the slave is intitled to the same protection in *England* before as after baptism; and whatever service the heathen negro owed of right to his *American* master, by general, not by local law, the same (whatever it be) is he bound to render when brought to *England*, and made a Christian. *Id.* 425.



**SLUICE**, is a frame to keep or let out water. By 1 G. 2. c. 19. to destroy any lock or sluice on any navigable river is made felony, and the offender may be transported for seven years.

**SMUGGLERS**, are those persons that conceal prohibited goods, and defraud the king of his customs on the sea coast, by running of goods and merchandize.

If any goods be shipped or landed without warrant and presence of an officer, the vessel shall be forfeited, and the wharfinger shall forfeit 100*l.*, and the master or mariner of any ship inward bound, shall forfeit the value of the goods: and any carman, porter, or other assisting, shall be committed to gaol, till he find surety of the good behaviour, or until he shall be discharged by the court of exchequer. 13 & 14 C. 2. c. 11.

If goods be relanded after drawback, the vessel and goods shall be forfeited; and every person concerned therein shall forfeit double value of the drawback. 8 Ann. c. 13.

Goods taken in at sea shall be forfeited, and also the vessel into which they are taken; and every person concerned therein shall forfeit treble value. 9 G. 2. c. 35.

Vessel hovering near the coast shall be forfeited, if under fifty tons burden; and the goods shall also be forfeited, or the value thereof. 5 G. 3. c. 43.

Persons receiving or buying run goods shall forfeit 20*l.* 8 G. c. 18.

Concealer of run goods shall forfeit treble value. 8 G. c. 18.

Offering run goods to sale, the same shall be forfeited, and the person to whom they are offered may seize them; and the person offering them to sale shall forfeit treble value. 11 G. c. 30.

Porter or other carrying run goods shall forfeit treble value. 9 G. 2. c. 35.

Persons armed or disguised carrying run goods, shall be guilty of felony, and transported for seven years. 8 G. c. 18. 9 G. 2. c. 35. And if they be three or more in company, they shall be guilty of felony without benefit of clergy. 19 G. 2. c. 34.

An officer of the customs is liable to an action for a wrong seizure, notwithstanding that there may be a probable cause. *Str.* 820.

**SNUFF.** See **TOBACCO.**

**SOAP.**

**SOAP.** By the 27 G. 3. c. 13. certain duties are imposed on all soap made in *Great Britain*, and also on all soap imported, and drawbacks allowed on the exportation thereof; as set forth in schedules annexed to the said act: which duties, on home made soap, are to be under the management of officers appointed by the commissioners of the treasury.

And by the 24 G. 3. c. 41. every soap-maker shall take out a licence annually from the officers of ~~excise~~.

**SOC**, *foke*, Sax. power or liberty to minister justice, and execute laws; also a circuit or territory wherein such power is exercised. Whence the word *foca* is used for a seignior or lordship infranchised by the king, with the liberty of holding a court of sokmen.

#### SOCAGE :

**TENURE** in *focage*, according to *Littleton*, is where the tenant holds his tenement of the lord by any certain service, in lieu of all other services, so that the service be not knight's service. *Litt. sect. 17.*

The service therefore must be certain, in order to denominate it *focage*; as to hold by fealty and certain rent; or by homage, fealty, and certain rent; or by homage and fealty without rent; or by fealty and certain corporal service; as ploughing the lord's land for a determinate number of days; or by fealty only, without any other service. *2 Black. 79.*

Services originally were of various kinds; as by payment of a rose, a pair of gilt spurs, a certain number of capons or hens, or certain bushels of corn; and of some tenements, the service was to be hangman, or executioner of persons condemned in the lord's court: for in ancient time, such officers were not volunteers, nor for lucre to be hired, unless they were bound thereto by tenure. *1 Inst. 86.* And from hence, perhaps, came the denomination of the *common* hangman; being an officer known and distinguished by the nature of his tenure.

The common lawyers generally derive this word from *foca*, which they say is an old Latin word denoting a plough; but as service of the plough was only one amongst several other species of *focage*, Mr. *Sommer's* etymology seems more apposite, who derives it from the *Saxon* appellation *foc*, which signifies liberty or privilege, denoting thereby a free or privileged tenure. *2 Black. 80.*

By the statute of 12 C. 2. c. 24. all the ancient tenures by knight's service are turned into free and common socage.

#### SOLDIERS :

1. THE regulations concerning the soldiery (exclusive of the militia) depend chiefly on the annual acts against mutiny and desertion. In the case of *inlisting*, when any man shall be inlisted, he shall in four days time, but not sooner than twenty-four hours, be carried before the next justice of the peace, and before him shall be at liberty to declare his dissent to such inlisting; and in such case, on returning the inlisting money, and 20s. for the charges expended on him, he shall in presence of such justice be discharged; otherwise, he shall take the oath of inlisting before such justice, and by him be certified to be duly inlisted: but if, after having received the inlisting money, he shall abscond, or refuse to go before such justice, he shall be deemed to be inlisted, and may be proceeded against as if he had taken the said oath.

2. No foldier shall be *arrested* and taken out of the service for any debt less than 10 l.

3. Soldiers shall not be billeted except only in public houses, and not in the house of any private person without his consent.

4. During the time of *election* of members of parliament, they shall, by order of the secretary at war, be removed from the place of election.

5. If any officer or soldier shall kill *game*, without leave of the lord of the manor, such officer shall forfeit 5 l., and for every such soldier killing game, the commanding officer shall forfeit 20s.: and such officer, not paying, shall forfeit his commission.

6. Every officer or soldier who shall excite or join in any *mutiny* or sedition, or shall not use his utmost endeavours to suppress the same, or shall not give immediate notice thereof to his commanding officer, or shall desert, or list in any other regiment, or be found sleeping on his post, or leave it before relieved, or shall hold correspondence with the enemy, or strike, or use any violence against his superior officer, or disobey his lawful commands, shall suffer death, or such other punishment as a court martial shall inflict.

7. The constable may take up any person reasonably suspected to be a *deserter*, and carry him before a justice; and if it

it shall appear that he is a deserter, the constable shall have a reward of 20 s., to be paid to him by the collector of the land tax of that parish or township.

8. After their discharge, foldiers may set up and use any trade in any place, (except the two universities,) notwithstanding any by-law of such place, and notwithstanding their not having served a regular apprenticeship to such trade: and neither they, nor their wives or children, during the time they shall exercise such trades, shall be removeable to their place of settlement, until they shall become actually chargeable.

SOLICITOR, is a person employed to follow and take care of suits depending in the courts of equity. But by statute 23 G. 2. c. 26. a solicitor may be sworn and admitted an attorney in the court of king's bench or common pleas; as by 2 G. 2. c. 23. an attorney may be sworn and admitted a solicitor in any of the courts of equity.

SON ASSAULT, is a justification in an action of assault and battery; because the plaintiff made the first assault, and what the defendant did, was in his own defence.

SORCERY, *fortilegium*, is witchcraft or divination by lots. By the 9 G. 2. c. 5. all prosecutions for sorcery, enchantment, or conjuration, are abolished; and any person pretending to the same shall be imprisoned for a year, set on the pillory four times in that year, and further bound to the good behaviour as the court shall award.

SOULSCOT, *symbolum animæ*, in the laws of king Canute, is used for a mortuary; a payment originally voluntary, given to the priest, supposed for the benefit of the soul of the deceased. 2 Black. 425. |

SPECIAL JURY, was originally introduced in trials at bar, when the causes were of too great nicety for the discussion of ordinary freeholders; or where the sheriff was suspected of partiality, though not upon such apparent cause as to warrant an exception to him. He is, in such cases, upon motion in court, and a rule granted thereupon, to attend the prothonotary, or other proper officer, with the freeholder's book; and the officer is to take indifferently forty-eight of  
the



the principal freeholders in the presence of the attornies on both sides ; who are each of them to strike out twelve, and the remaining twenty-four are returned upon the panel. 3 *Black.* 357.

Either party is intitled upon motion to have a special jury struck, as well at the assizes as at bar, he paying the extraordinary expence ; unless the judge shall in open court certify upon the back of the record, that the cause was proper to be tried by a special jury. *Id.* 358.

A person serving on a special jury, shall not be allowed more than the sum which the judge shall think reasonable, not exceeding one guinea ; except in causes wherein a view is directed. 24 *G. 2. c.* 18.

**SPECIAL OCCUPANT.** See *PUR AUTER VIE.*

**SPECIAL PLEADING,** is where the defendant doth not traverse or deny the whole declaration, (which is called the *general issue*,) but sets forth some special matter whereby to evade it. Special pleas, in bar of the plaintiff's demand, are various, according to the circumstances of the defendant's case ; as in real actions, a general release or a fine, either of which may destroy and bar the plaintiff's title. Or in personal actions, an accord, arbitration, condition performed, non-age of the defendant, or some other fact which precludes the plaintiff from his action. A justification is likewise a special plea in bar ; as in actions of assault and battery, that the plaintiff struck first ; in trespass, that the defendant did the thing complained of in right of some office which warranted him so to do ; or in an action of slander, that the plaintiff is as bad as the defendant represented him. Formerly, the general issue was seldom pleaded, except when the party meant wholly to deny the charge alleged against him ; but when he meant to excuse or palliate the charge, it was usual to set forth the particular facts in a special plea. But the science of special pleading having been often perverted to the purposes of delay, the courts, in some instances, and the legislature in many more, have permitted the general issue to be pleaded, and the special matter to be given in evidence. 3 *Black.* 305.

**SPECIALTY :**

**DEBTS** by *specialty*, or *special contract*, are such whereby a sum of money becomes due by deed, or instrument under seal : whereas, on the contrary, debts by *simple contract* are such,

such, where the contract upon which the obligation arises is neither ascertained by matter of record, nor yet by deed or special instrument, but by mere oral evidence, or by notes unsealed, which are only better than a verbal promise, by being capable of a more easy proof. 2 *Black.* 465.

**SPECIFIC LEGACY**, is the bequest of a certain particular thing; as of a horse, or a piece of plate, or the like; which, in case of a deficiency of assets, shall not abate as the other legacies, unless there shall not be sufficient without it. 2 *Black.* 512.

**SPECIFIC RELIEF IN EQUITY**, is where the courts of law cannot give a remedy in kind, but only a recompence in damages; in which case, a court of equity will compel the thing itself specifically to be performed: as in the case of executory agreements, a court of equity, instead of giving damages for their non-performance, will compel them to be carried into strict execution. 3 *Black.* 438.

**SPIRITING** away of men, women, or children, is a very heinous crime; and punishable by fine, imprisonment, and pillory. 4 *Black.* 219.

**SPIRITUAL CORPORATIONS**, are where the members thereof are intirely spiritual persons; as bishops, archdeacons, parsons, and vicars, which are *sole* corporations; so deans and chapters, as formerly abbot and convent, are bodies *aggregate*. 1 *Black.* 470.

**SPIRITUAL COURT.** See ECCLESIASTICAL COURT.

**SPIRITUALTIES**, guardian of, is the archbishop during the vacancy of a bishopric; and when the archbishopric is vacant, the dean and chapter of his diocese are guardians of the spiritualties, who exercise all ecclesiastical jurisdiction during the vacancy. *Ayliff's Parerg.* 125.

**SPIRITUOUS LIQUORS.** By the 27 G. 3. c. 13. a duty is imposed on all spirits made in *Great Britain*, and also on all spirits imported; and drawbacks are allowed on the exportation thereof, as set forth in schedules annexed to the act.

And

And by several statutes, regulations are made for the distilling and rectifying of spirits, which is to be under the management of the officers of excise.

And by the 24 G. 3. c. 41. every distiller and rectifier of spirits shall take out a licence annually, for which he shall pay according to the contents of his still, on the penalty of 30*l*.

And every dealer in spirits, not being a retailer, rectifier, or distiller, shall take out a licence annually, for which he shall pay 5*l*. on the penalty of 100*l*.

And by the 30 G. 3. c. 38. every retailer of spirits, shall take out a licence annually, for which he shall pay a sum in proportion as his house shall be rated, under the 19 G. 3. for imposing a duty on inhabited houses, on the penalty of 50*l*.

**SPOLIATION**, is a writ obtained by one of the parties in suit, suggesting that his adversary (*spoliavit*) hath wasted the fruits and profits, or received the same, to the prejudice of him who sueth out the writ. It is brought in the spiritual court, by one incumbent against another, where they both claim by one patron, and the right of patronage doth not come in question; as if a parson be created a bishop, and hath a dispensation to hold his benefice, and afterwards the patron presents another incumbent, who is instituted and inducted, in this case the former may have a spoliation in the spiritual court against the latter, because they both claim by one patron, and the right of patronage doth not come in debate; and because the intruder came into possession of the benefice, by the course of the spiritual law; that is, by institution and induction: for otherwise, if he be not instituted and inducted, a spoliation lies not against him, but a writ of trespass, or an assize of *novel disseisin*. F. N. B.

**SQUIBS.** See FIREWORKS.

**STABBING**, is a species of manslaughter, which is punished as murder, the benefit of clergy being taken away from it by statute 1 Ja. c. 8. which enacts, that where one thrusts or stabs another, not then having a weapon drawn, or who hath not then first stricken the party stabbing, so that he dies thereof within six months after, the offender shall not have the benefit of clergy, though he did it not of malice aforethought.

**STABLE STAND**, *stabilis statio*, is where a man is found at his *standing* in the forest, with a cross or long bow bent, ready to shoot at any deer; or standing close by a tree, with greyhounds in a leash, ready to slip. It was an evidence or presumption of a man's intending to steal the king's deer in the forest.

**STAFF-HERDING**, is a right to drive cattle on a common, gently, without hounding or other violence.

**STALLAGE**, *stallagium*, (from the Saxon *stal*, *stabulum*, *statio*,) is a payment for the liberty of setting up a stall in a fair or market.

Of common right, every man hath liberty of coming into any public market or fair, to buy and sell, without paying any toll, unless it be due by custom or prescription; but if he requires any particular easement or convenience, as a stall in the market or fair, he must agree with the owner of the soil, if there be no particular sum fixed by the custom for stallage; if there is a fixed sum, he must pay the same accordingly. 1 *Wilson*, 114.

**STANNERIES**, (from *stannum*, tin,) are the mines and works in *Devonshire* and *Cornwall*, where tin metal is got and purified. The privileges of the tanners are confirmed by a charter 33 *Ed.* 1. and expounded by a private statute 50 *Ed.* 3. and further by a public act 16 *C.* 1. c. 15. by which all labourers in and about the stanneries shall have the privilege of the stannary court while they work there, and may not be impleaded in any other court, for any cause arising within the stanneries; except for pleas of land, life, or member. Their courts are holden before the lord warden, or his substitutes, and no writ of error lies from thence to any court at *Westminster*. But an appeal lies from the steward of the court to the under-warden, from him to the lord warden, thence to the privy council of the prince of *Wales*, as duke of *Cornwall*, and from thence to the king. 3 *Black.* 80.

**STAR**, (*starrum*,) said to be from an Hebrew word *shetar*, a deed or contract, which were anciently called *stars*, and writ for the most part in Hebrew alone, or in Hebrew and Latin underneath it. And some are of opinion, that the court called the *star-chamber* had its name from thence; because



because in that place, the said stars or contracts were anciently kept. 4 *Black.* 266.

STAR, or *bent*, planted on the sea coasts in the north-west parts of *England*, being of great use to preserve the sand from being blown away, and cast upon the adjacent lands; a penalty of 20*s.* is inflicted on any person pulling up or destroying the same, by the statute 15 *G. 2. c. 33.*

STARCH. By the 24 *G. 3. c. 41.* every starch-maker shall take out a licence annually, from the officers of excise.

And by several statutes, regulations are made for the making of starch, and duties are imposed thereon, which are also to be under the management of the officers of excise.

STAR CHAMBER, *camera stellata*, is said to have been so called from the roof of the chamber where the court was holden having been anciently garnished with gilded stars. It was a court of very ancient original, but new modelled afterwards by divers statutes. It consisted of several of the lords spiritual and temporal, being privy counsellors, together with two judges of the courts of common law, without the intervention of any jury. Their legal jurisdiction extended over riots, perjury, misbehaviour of public officers, and other notorious misdemeanors. But afterwards, they stretched their power beyond the utmost bounds of legality, vindicating all the incroachments of the crown, in granting monopolies, in issuing proclamations which should have the force of laws, in punishing small offences, or no offences at all, but of their own creating, by exorbitant fines, imprisonment, and corporal severities; until at last this court became so odious, that it was finally abolished by the statute 16 *C. 10. 4 Black.* 264.

STATUTE has divers significations. First, it signifies an act of parliament made by the king, lords, and commons in parliament. Secondly, it is a short writing called a statute merchant, or statute staple, which are in the nature of bonds, and are called *statutes*, as being made according to the form provided in certain statutes or acts of parliament.

**STATUTE MERCHANT**, is a bond, or obligation of record, acknowledged before sufficient persons for that purpose appointed, sealed with the seal of the debtor and of the king; on condition, that if the obligor pay not the debt at the day, execution may be awarded upon his body, lands, and goods; and that the obligee may hold the lands to him, his heirs and assigns, till the debt is satisfied and paid. And during the time of being in possession of the lands, the obligee hath an estate by *statute merchant*, or is *tenant by statute merchant*; the bond or recognizance being so called, because it is entered into pursuant to the *statute 13 Ed. 1. de mercatoribus*.

Statutes merchant were contrived for the security of merchants only, to provide a speedy remedy to recover their debts; but afterwards they were used by others, and became one of the common assurances of the kingdom. But now statutes merchant are mostly out of use. *Wood. b. 2. c. 3.*

**STATUTE STAPLE.** *Staple* signifies a mart or market, and is that market town where the merchants are commanded to bring their goods. And a *statute staple* is a bond of record, acknowledged before the mayor of the staple or town, in the presence of one or more constables of the same staple; by virtue of which statute staple, the creditor may forthwith have execution of the body, lands, and goods of the debtor, on non-payment. And then he hath an estate in the lands of *statute staple*, or is *tenant in statute staple*, till the debt is paid. It is denominated a *statute*, because it is founded on the statute 27 Ed. 3. c. 9. which sets forth the manner of entering into it, and of its execution. *Wood. b. 2. c. 1.*

There is also a *statute staple*, improperly so called, being a *recognizance in the nature of a statute staple*, which extends the benefit of this mercantile transaction to all the king's subjects in general, by virtue of the statute 23 H. 8. c. 6.

But now *statute staple*, as well as *statute merchant*, are in a great measure become obsolete.

**STERLING**, was the epithet for silver money current within this kingdom, and took name from this; that there was a pure coin stamped first in *England*, by the *Easterlings*, or merchants of *East Germany*, by the command of king *John*; and *Hoveden* writes it *esterling*. Instead of the pound sterling,

sterling, we now say, so many pounds of lawful *English* money; but the word is not wholly disused, for though we ordinarily say lawful money of *England*, yet in the mint they call it sterling money. And when it was found convenient in the fabrication of money to have a certain quantity of baser metal to be mixed with the pure gold and silver, the word *sterling* was then introduced; and it has ever since been used to denote the certain proportion or degree of fineness, which ought to be retained in the respective coins. *Lownd's Essay on Coins*, 14.

STEWES, (from the French *estuves*, a *stove*, or bath,) are those places which were permitted in *England* to women of professed lewdness, and who for hire would prostitute their bodies to all comers; so called, because dissolute persons are wont to prepare themselves for acts of incontinence by bathing. These had long continued on the bank side in *Southwark*, but were finally suppressed by king *Henry* the eighth, by proclamation, in the 37th of his reign. 3 *Inst.* 205.

STINT, is the proportionable part of a man's cattle, which he may keep upon the common. The general rule is, that the commoner shall not turn more cattle upon the common, than are sufficient to manure and stock the land, to which his right of common is annexed. There may be such a thing as common without stint or number; but this hath been very seldom granted; and the grantee, at this day, cannot grant it over. 3 *Black.* 239. *L. Raym.* 407.

STIRPES, a stock, is chiefly used in estimating the different interests of the several kindred, in the distribution of an intestate's effects; of which kindred, some take *per capita*, by the heads, and some *per stirpes*, by the stocks, from which they have respectively descended: as if the next of kin to the intestate be his three brothers, *A.*, *B.*, and *C.*: here his estate is divided into three equal portions, and distributed *per capita*, to every one an equal share; but if one of these brothers, *A.* had been dead, leaving three children, and another, *B.* leaving two, then the distribution must have been *per stirpes*; to wit, one third to *A.*'s three children, another third to *B.*'s two children, and the remaining third to *C.* the surviving brother: yet if *C.* had also been dead without issue, then *A.*'s and *B.*'s five children, being all in equal

equal degree to the intestate, would take in their own rights *per capita*; to wit, each of them one fifth part. 2 *Black.* 517.

But in case of real estates, they do not descend *per capita*, but shall go to the lineal descendants *in infinitum*. As in the case of the three brothers abovementioned, the estate shall descend to the eldest singly, and his heirs, in exclusion of the other two brothers and their descendants. 2 *Black.* 216.

**STOC** and *stovel*, a forfeiture where one is taken carrying sticks and *pabulum* out of the woods; *stoc* signifying stick, and *stovel*, *pabulum*, (fodder for cattle.)

**STOCK**, a stump of a tree; hence *stoke*, a woody ground: which is often added to the name of a place, as *Greystock*, *Basingstoke*, *Woodstock*. Hence also a pair of stocks; an engine made of two pieces of timber, for putting the legs of offenders in, for the securing of disorderly persons, and by way of punishment of divers offenders by several acts of parliament. Every vill is, by the common law, bound to provide a pair of stocks. 2 *Harv.* 73.

**STOCK JOBBING.** By the 7 G. 2. c. 8. all contracts upon which any premium shall be given for liberty to put upon, or to deliver, accept, or refuse any public stock or security, or any share or interest therein, and all wagers, and contracts in the nature of wagers, relating to the price of stock, shall be void, and the money paid thereon shall be restored, or may be recovered by action with double costs; and persons making such contracts shall forfeit 500*l.*

And no money shall be given or received for compounding differences relating to stock not actually delivered, on pain of 100*l.*

Stock sold, and not paid for at the time agreed on, may be sold again, and the first buyer shall make good the damage.

And if stock be bought and not transferred, the buyer may purchase other stock, and recover like damage.

And all contracts for stock, whereof the seller is not in actual possession at the time, shall be void; and every of the parties shall forfeit 500*l.* and the broker 100*l.*

**STOLEN GOODS.** By 3 W. c. 9. if any person shall buy or receive any stolen goods, knowing them to be stolen,  
Vol. II. A 2 he



he shall be deemed an accessory after the fact, and suffer accordingly.

By 4 G. c. 11. if any person shall take money or other reward, under pretence of helping any person to stolen goods, he shall, unless he prosecutes the felon, be guilty of felony, in the same manner as if he had stolen the said goods,

And by the same statute, advertising a reward for the return of things stolen, with no questions asked, or words to the like purport, subjects both the advertiser and printer to a forfeiture of 50*l*.

By the 30 G. 2. c. 24. if any person who shall offer any goods by way of pawn, exchange, or sale, shall not give a satisfactory account how he came by the same, or if there be any other reason to suspect them to be stolen, the person to whom they are offered may detain him, and deliver him to a constable, who shall carry him before a justice; and if the justice shall find cause to suspect that the goods were stolen, he may commit him for six days for further examination; and if it shall appear to the satisfaction of such justice, that the said goods were stolen, he shall commit the offender to be dealt with according to law.

### STORES:

1. IF any person having charge of the king's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals provided for victualling the army, shall *imbezzle* the same, to the value of 20*s*.; or shall steal or imbezzle any of his majesty's sails, cordage, or other naval stores, to the like value of 20*s*.; he shall be guilty of felony without benefit of clergy: if under that value, he may be punished by fine, imprisonment, or process out of the exchequer. 31 *El*. c. 4. 22 C. 2. c. 5. 9 G. 3. c. 30.

2. No person shall *mark* any stores of war, or naval stores, with the king's mark; that is, cordage of three inches and upwards with a white thread laid the contrary way, or any smaller cordage with twine in lieu of white thread laid the contrary way, or any canvas with a blue streak in the middle, or any other stores with the broad arrow, on pain of forfeiting not exceeding 200*l*. 17 G. 2. c. 40.

And the person in whose custody such goods or stores so marked, or any timber, thick stuff, or plank, marked with the

the broad arrow, shall be found, shall incur the like forfeiture. 9 & 10 W. c. 41. 9 G. c. 8.

3. If any person shall, either in this realm, or in any place thereto belonging, *set on fire*, burn, or destroy, any of his majesty's military, naval, or victualling stores, or other ammunition of war, or any place where the same shall be kept, he shall be guilty of felony without benefit of clergy. 12 G. 3. c. 24.

4. The king shall have power by proclamation, to prohibit the *exportation* of gunpowder and salt-petre, or any sort of arms or ammunition; and if any such shall be shipped after such proclamation, the same shall be forfeited; and the owner shall forfeit 100*l.* for every hundred weight of salt-petre and gunpowder; 100*l.* for every twenty-five arms; and 100*l.* for every two hundred weight of other ammunition; and every person assisting in shipping the same, shall forfeit 100*l.* and treble value, and the master also shall forfeit 100*l.* 12 G. 2. c. 4. 29 G. 2. c. 16.

SUBINFEUDATION, was where the inferior lords, in imitation of their superiors, began to carve out and grant to others minuter estates than their own, to be held of themselves, and were so proceeding downwards *in infinitum*, till the superior lords observed, that by this method of subinfeudation they lost all their feudal profits of wardships, marriages, and escheats, which fell into the hands of those mesne or middle lords, who were the immediate superiors of the *terretenant*, or him who occupied the land. This occasioned the statute of *quia emptores terrarum*, 18 Ed. 1. to be made, which directs, that upon all sales or feoffments of lands, the feoffee shall hold the same, not of his immediate feoffor, but of the chief lord of the fee, of whom such feoffor himself held it. And from hence it is holden, that all manors existing at this day, must have existed by immemorial prescription, or at least ever since the statute of *quia emptores* was made. 2 Black. 91.

SUBORNATION of perjury. See PERJURY.

SUBPŒNA, *ad testificandum*, is a process to cause witnesses to appear and give testimony, commanding them, laying aside all pretences and excuses, to appear, under the penalty (*sub pœna*) of 100*l.*, to be forfeited to the king; to which the statute 5 El. c. 9. hath added a penalty of 10*l.*

to the party grieved, and damages equivalent to the loss sustained for want of his evidence. A subpoena *duces tecum*, is to compel the witness to *bring with him* some writing or other evidence necessary to be produced in the cause. A subpoena in *chancery*, is a writ commanding the defendant to appear and *answer* the plaintiff's bill; so there is a subpoena to make *better answer*, subpoena to *reply*, subpoena to *rejoin*, subpoena to *hear judgment*, subpoena for *costs*, and divers others.

**SUBSIDY.** Anciently the necessities of government were supplied by *fifteenths* and *subsidies*. A *fifteenth*, was a grant by the commons of the fifteenth part of all their moveable goods, for personal estate was very inconsiderable in those days, an intire fifteenth throughout the kingdom being only about 29,000*l.*; and therefore unto this was superadded the *subsidy*, which was an aid to be levied of every subject of his lands or goods, after the rate of 4*s.* in the pound for lands, and 2*s.* 8*d.* for goods. This subsidy was estimated at a medium at about 70,000*l.*, whilst a subsidy of the clergy (including the monasteries) was about 20,000*l.* But this way of taxation by fifteenths and subsidies being attended with many inconveniencies, they were succeeded by the modern land tax.

**SUCCESSOR.** A sole corporation regularly cannot take in succession goods and chattels, either in action, as bonds and recognizances; or in possession, as leases for years; for the executors or administrators shall have them. And although a lease be made to a man and his heirs, yet it shall not go to his heirs, but to his executors. 1 *Inst.* 46.

**SUFFERANCE**, (estate at,) is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all; as if a man takes a lease for a year, and after the year is expired, continues to hold the premises without any fresh leave from the owner of the estate. Or if a man grants a lease at will, and dies, the estate at will is thereby determined; but if the tenant continue in possession, he is tenant at sufferance: and in this case, having come in by lawful title, the landlord cannot recover possession, but by actual entry and legal process of ejectment. But by the 4 G. 2. c. 28. tenants holding over, after determination of their term, and after demand made in writing, to deliver possession, are rendered

rendered liable to pay double the yearly *value*. And by the 11 G. 2. c. 19. tenants giving notice of their intention to quit, and not accordingly delivering up the possession at the time in such notice contained, are rendered liable to pay double the *rent* they should otherwise have paid. And it hath been held, that under this act, the notice need not be in writing, and that the landlord may levy this double *rent* by *distress*. *Bur. Mansfield*, 1603.

**SUGGESTION**, is a surmise of a thing; and by *magna charta*, no person shall be put to his law, on the suggestion of another, but by lawful witnesses. 9 H. 3. c. 28.

Suggestions are grounds to move for prohibitions to suits in the spiritual courts, where they meddle with matters out of their jurisdiction. Though matters of record ought not to be stayed on the bare suggestion of the party, there ought to be an affidavit made of the matter suggested, to induce the court to grant a rule for staying the proceedings. 2 Lill. Abr. 536.

In which case, the party aggrieved in the court below applies to the superior court, setting forth in a suggestion upon record, the nature and cause of the complaint, in being drawn *ad aliud examen*, by a jurisdiction or manner of process disallowed by the laws of the kingdom; upon which, if the matter alleged appear to the court to be sufficient, the writ of prohibition immediately issues; but if the point be doubtful, the court will not determine upon that motion, but will require the party to declare in prohibition; that is, to prosecute an action: and if upon argument, the court shall be of opinion that the suggestion is sufficient, they will thereupon grant the prohibition. 3 Black. 113.

**SUICIDE**. See **FELO DE SE**.

**SUIT**, *secta*, (*a sequendo*,) anciently signified the witnesses or *followers* of the plaintiff; and to this day, the concluding words of the declaration are, "and thereupon he bringeth *suit*." For in former times, the law would not put the defendant to the trouble of answering the charge, till the plaintiff had made out at least a probable case. But the actually producing the *suit*, *secta*, or *followers*, is now antiquated; though the form thereof still continues. 3 Black. 295.

A a 3

SUMAGE,



SUMAGE, toll for carriage on horseback.

SUMMARY proceedings, are such as are directed by particular acts of parliament, for the conviction of offenders, and the inflicting of certain penalties created by those acts. In which there is no intervention of a jury, but the party accused is acquitted, or condemned, by the suffrage of such person only as the statute hath appointed for his judge. Of this kind are most of the proceedings before justices of the peace, intended for the ease of the subject, by doing him speedy justice, and not harassing the freeholders with frequent and troublesome attendance to try every minute offence; but hereby, withal, the subject is deprived of the benefit of that famous clause in the great charter, that a man shall be tried by his equals. 4 *Black.* 280.

SUMMONS, is a notice given upon all writs in real actions; and also upon personal writs for injuries not being against the peace, for the defendant to appear in court at the return of the original writ; and this notice is given to the defendant by two of the sheriff's officers called *summoners*, either in person, or left at his house or land; in like manner as in the civil law, the first process is by personal citation. This warning on the land, is given in real actions, by erecting a white stick or wand on the defendant's grounds; and by the statute of 31 *El. c. 3.* it must also be proclaimed on some *Sunday* before the door of the parish church. 3 *Black.* 279.

Also in summary convictions before justices of the peace, it is necessary that the party accused be summoned before he be condemned. 4 *Black.* 279.

But the want of a summons in such case may be supplied, if the party appears and answers to the charge against him. *Bur. Mansf.* 1786.

SUNDAY. See LORD'S DAY.

SUPERSEDEAS, is a writ that lies in a great many cases, and signifies in general, a command to stay proceedings at law, on good cause shewn, which ought otherwise to proceed. *F. N. B.*

When a certiorari is delivered, it is a supersedeas to inferior courts below; and being allowed, all their proceedings afterwards are erroneous,

If

If a sheriff holds plea of 40s. debt in his county court, the defendant may sue for a superseedeas that he do not proceed; or after judgment, he may have a superseedeas directed to the sheriff, requiring him not to award execution upon such judgment.

**SUPPLETORY OATH**, in ecclesiastical proceedings, is an oath given by the judge to the plaintiff or defendant, upon half proof already made: this being joined to the half proof, supplies and gives sufficient power to the judge to condemn or absolve. This oath is discretionary in the judge, and is only used where there is but what the civilians esteem a *semiplena probatio*; for if there be full proof, it is never required; and if the evidence doth not amount to a half proof, it is never granted, because this oath is not evidence strictly speaking, but only confirmation of evidence; and if that evidence doth not amount to a half proof, a confirmation of it by the party's own oath will not alter the case. *Strange*, 80.

**SUPPLICAVIT**, is a writ issuing out of the king's bench or chancery, for taking surety of the peace, and is commonly issued to the justices of the peace, when they are averse from acting in the affair in their judicial capacity; and the justice who takes the recognizance, must make a return to the writ, under his hand and seal, specifying his compliance. But this writ is seldom used; for when application is made to the superior courts, they usually take the recognizance there. And indeed a peer or peers cannot be bound in any other place than the court of king's bench or chancery. 4 *Black*. 253.

**SUPPOSITITIOUS BIRTH**. See *VENTRE INSPICIENDO*.

**SUPREMACY**. The papal incroachments upon the king's sovereignty in this realm having anciently obtained great strength and long continuance, it at length became necessary to assert and vindicate the king's supreme authority, by several acts of parliament; declaring, that the supremacy of the crown of *England* in matters ecclesiastical is a most indubitable right of the crown; that this kingdom is an absolute empire and monarchy, consisting of one head which is the king, and of a body consisting of several members, which the law divides into two parts, the clergy and laity,

both of them next and immediately under God, subject and obedient to the head. And finally, it hath been thought proper to substitute by authority of parliament a recognition by oath of the king's supremacy, specifying that no foreign prince, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. 1 *Black.* 368.

**SURCHARGE**, an overcharge; as where a man puts more cattle upon the common than he hath a right to do, he is said to surcharge the common. In which case, he that surcharges doth an injury to the rest of the owners, by depriving them of their respective portions, or at least contracting them into a smaller compass. The usual remedies for surcharging are either by distraining so many of the beasts as are above the number allowed, or else by an action of trespass; both which may be had by the lord; or by a special action on the case for damages; in which any commoner may be plaintiff. 3 *Black.* 237.

**SURETY**, is the bail or pledge for any person, that he shall do or perform such a thing; as surety for the peace is the acknowledging a recognizance or bond to the king, taken by a competent judge of record, for keeping the king's peace. And this surety of the peace, every justice of the peace may take and command by a twofold authority: first, as a minister, commanded thereto by an higher authority: as when a writ of *supplicavit*, directed out of the chancery or king's bench, is delivered to him: secondly, as a judge, and by virtue of his office derived from the commission of the peace. *Dalt. c.* 116.

**SURREBUTTER**, is the replication or answer of the plaintiff to the defendant's *rebutter*.

**SURREJOINER**, is the plaintiff's answer to the defendant's *rejoinder*. First, the plaintiff *declares* his cause of action; to this the defendant puts in his *plea*, unto which the plaintiff may offer a *replication*, then the defendant brings his *rejoinder*, unto which the plaintiff replies by a *surrejoinder*; and sometimes the cause goes on to a *rebutter* and *surrebutter*.

**SURRENDER**, is properly a yielding up of an estate for life or years, to him that hath an immediate estate in reversion or remainder; wherein the estate for life or years may merge or drown, by mutual agreement between them. 1 *Inst.* 337.

There is also a surrender of customary estates holden by copy of court roll; in which case the word *surrender* is so necessary, that it cannot be supplied by any other word of conveyance. These surrenders are of several sorts, according to the several customs of manors. In some manors, where a copyholder surrenders his tenement, he holds a little rod in his hand, which he delivers to the steward or bailiff, according to the custom of the manor, to deliver it over to the party to whose use the surrender was made, in the name of feisin, and from thence they are called tenants by the *virge*. In some manors, instead of a wand, a straw is used, and in other manors a glove; and always the custom of the place is to be observed. *Coke's Copyb.* 103, 4.

**SURVIVORSHIP**, is where two persons or more are seised of a joint estate of inheritance, for their own lives, or for the life of another person, or are jointly possessed of any chattel interest; in which case the intire tenancy, upon the decease of any of them, remains to the survivors, and at length to the last survivor. And the same law is as to things personal. They cannot indeed be vested in coparcenary, because they do not descend from the ancestor to the heir, which is necessary to constitute coparceners. But if a horse, or other personal chattel, be given to two or more, they are jointenants thereof; and unless the jointure be severed, the same doctrine of survivorship shall take place as in estates of lands and tenements. But for the encouragement of husbandry and trade, it is held, that a stock on a farm, though occupied jointly, and also a stock used in a joint undertaking, by way of partnership in trade, shall be considered as common, and not as joint property; and there shall be no such survivorship therein. 2 *Black.* 183. 399.

**SUSPENSION**, is an ecclesiastical censure, and is of two sorts; one relating solely to the clergy, the other extending also to the laity. That which relates solely to the clergy, is suspension from office and benefice jointly, or from office or benefice singly, and may be called a temporary degradation, or deprivation, or both. The other sort of suspension which extends also to the laity, is suspension *ab ingressu ecclesie*, or from the hearing of



of divine service, and receiving the holy sacrament; which may therefore be called a temporary excommunication. *Gibf.* 1047.

**SUS' PER COLL'.** When a criminal is attainted upon his trial, it is usual for the judge to sign the calendar or list of the prisoners' names, with their separate judgments, in the margin. As, for a capital felony, it is written opposite the prisoner's name, "let him be hanged by the neck;" which, when the proceedings were in Latin, was "*suspendatur per collum*;" or in the more abbreviated form "*sus' per coll'*." 4 *Black.* 403.

**SUSPICION.** It hath been held by some, that a justice of the peace cannot apprehend a felon on bare suspicion; but it seems to be the better opinion, that a justice may issue a warrant to apprehend a person suspected of felony, though the original suspicion be not in himself, but in the party that prays the warrant, because he is a competent judge of the probability offered to him of such suspicion. But it is fitting to examine upon oath the party requiring a warrant, as well to ascertain that there is a felony or other crime actually committed, without which no warrant should be granted; as also to prove the cause and probability of suspecting the party, against whom the warrant is prayed. 4 *Black.* 290.

The causes of suspicion which are generally agreed to justify the arrest of an innocent person for felony, are, (1.) being found in such circumstances as induce a strong presumption of guilt; as being found in possession of any part of goods stolen, without giving a probable account of coming honestly by them; (2.) absconding; (3.) being found in company of known offenders, or of persons of scandalous reputation; (4.) living an idle, vagrant, and disorderly life, without having any visible means to support it; (5.) being pursued by hue and cry; for if a felony is done, and one is pursued upon hue and cry, who is not of ill fame, nor suspicious, yet he may be attached and imprisoned by the law of the land. But generally, no such cause of suspicion, as the above mentioned, will justify an arrest, when in truth no such crime hath been committed, unless it be in the case of hue and cry. 2 *Haw.* 76.

**SWAINMOTE** court, in forests, is holden before the verderers as judges, by the steward of the swainmote, thrice in every

every year ; the fweins or freeholders within the forest composing the jury. Unto this court all the freeholders in the forest owe suit and service. And all the officers of the forest are to appear at every swainmote ; also out of every town and village in the forest, four men and a reeve. The jurisdiction of this court is, to inquire into the oppressions and grievances committed by the officers of the forest ; and to receive and try presentments certified from the court of attachments against the offenders in vert and venison.

SWANS. It is felony to take any swans that are lawfully marked, though they be at large. *Dalt. c. 156.*

And if they be unmarked, yet if they be domestical or tame, that is, kept in a moat, or in a pond near to the dwelling house, to steal such is also felony. *Id.*

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost ; and so long, felony cannot be committed by taking them. *Id.*

And yet such unmarked and wild swans the king's officers may seize for the king's use, by his prerogative. Also the king may grant them, and consequently another may prescribe to have them, within a certain place or precinct. *Id.*

Swans may be estray, which no other fowl can be. *Kitch. 86.*

Taking swans eggs out of the nest is punishable by imprisonment for a year, and fine at the discretion of the court. *11 H. 7. c. 17.*

SWEARING. By the 19 G 2. c. 21. (which act is to be read by the minister in every church and chapel, four times in the year, on the *Sundays* next after *Lady-day*, *Midsummer*, *Michaelmas* and *Christmas* ) every labourer, soldier, or sailor, profanely cursing or swearing, shall forfeit 1*s.* ; every other person, under the degree of a gentleman, 2*s.* ; and every gentleman or person of superior rank, 5*s.* ; to the poor of the parish : on a second conviction, double ; and for every subsequent offence, treble ; with all charges of conviction : and, in default of payment, shall be committed to the house of correction for ten days, unless he be a soldier or sailor, who shall, instead thereof, be set in the stocks for the first offence one hour ; and for any number of offences whereof he shall be convicted at one and the same time two hours. And any justice of the peace may convict him on his own hearing, or the testimony of one witness ; and any constable,

ble, or peace officer, on his own hearing, may apprehend and carry him before a justice.

**SWEETS.** By the 24 G. 3. c. 41. every maker of sweets for sale, shall take out a licence annually, from the officers of excise. And by the 30 G. 3. c. 38. every retailer of sweets or British-made wines shall also take out a licence annually in like manner.

And by the 27 G. 3. c. 13. a duty is imposed on all made wines or sweets, made in *Great Britain* for sale, which is to be paid by the maker thereof.

**SYLVA CÆDUA**; wood under twenty years growth; coppice wood.

**SYNGRAPH**, from *συν*, together, and *γραφω*, to write,) was a deed, bond, or writing, under the hand and seal of both parties. Formerly, when deeds were more concise than at present, it was usual to write both parts on the same piece of parchment, with the word *syngraphus* in large letters written between them; through which the parchment being cut, one part thereof was delivered to each party; and these being matched and tallied together, proved their authenticity.

**SYNOD**, a meeting or assembly of ecclesiastical persons concerning religion; of which there are four kinds: 1. A general or universal synod or council, where bishops of all nations meet. 2. A national synod, of the clergy of one nation only. 3. A provincial synod, where ecclesiastical persons of a province only assemble. 4. A diocesan synod, of those of one diocese.

**SYNODALES TESTES**, were anciently persons summoned out of every parish to appear at the episcopal *synods*, and there *attest* or make presentment of the disorders of the clergy and people. They were in after-times a kind of impanelled jury, consisting of two, three, or more persons in every parish, who were upon oath to present all heretics and other irregular persons. And these in process of time became standing officers in several places, especially in great cities, and from hence were called *synodsmen*, and by corruption *sidesmen*: they are also sometimes called *questmen*, from the nature of their office, in making inquiry concerning offences.

fences. But, for the most part, this whole office is now devolved upon the churchwardens. *Ken. Par. Ant.* 649.

## T A I

## TAIL:

1. *Origin of estates tail.*
2. *What may or may not be intailed.*
3. *Of the several kinds of intail.*
4. *Incidents of intail.*
5. *Intail, how barred or destroyed.*
6. *Tenant in tail after possibility of issue extinct.*

1. *Origin of estates tail.*

By the common law all inheritances were *fee simple*, which were divided into two sorts; *fee simple absolute*, and *fee simple conditional*. *Litt. f.* 13.

A conditional fee at the common law was, a fee restrained to some particular heirs, exclusive of others; as, to the *heirs of a man's body*, by which only his lineal descendants were admitted, in exclusion of collateral heirs; or, to the heirs *male* of his body, in exclusion both of collaterals, and lineal females also. It was called a *conditional fee*, by reason of the condition expressed or implied in the donation of it, that if the donee died without such particular heirs, the land should revert to the donor. For this was a condition annexed by law to all grants whatsoever, that on failure of the heirs specified in the grant, the grant should be at an end, and the land return to its ancient proprietor. 2 *Black. b.* 2. c. 7.

Now, with regard to the *condition* annexed to these fees by the common law, it was held, that such a gift (to a man and the heirs of his body) was a gift upon condition, that it should revert to the donor, if the donee had no heirs of his body; but, if he had, it should then remain to the donee. It was therefore called a *fee simple*, on condition that he had issue. Now, it is to be observed, that when any condition is performed, it is thenceforth intirely gone; and the thing, to which it was before annexed, becomes absolute, and wholly unconditional: so that, as soon as the grantee hath any



any issue born, his estate was supposed to become absolute, by the performance of the condition ; at least for these three purposes : First, to enable the tenant to aliene the land, and thereby to bar not only his own issue, but also the donor, of his interest in the reversion. Secondly, to subject him to forfeit it for treason, which he could not do till issue born, longer than for his own life. Thirdly, to impower him to charge the land with rents, commons, and certain other incumbrances, so as to bind his issue. *Id.*

However, if the tenant did not in fact aliene the land, the course of descent was not altered by this performance of the condition ; for if the issue had afterwards died, and then the tenant, or original grantee, had died, without making any alienation ; the land, by the terms of the donation, could descend to none but the heirs of his body, and therefore, in default of them, must have reverted to the donor. *Id.*

For which reason, in order to subject the lands to the ordinary course of descent, the donees of these conditional fees simple, took care to aliene as soon as they had performed the condition by having issue ; and afterwards repurchased the lands, which gave them a fee simple absolute, that would descend to the heirs general, according to the course of the common law. And the judges gave way to this kind of finesse, by reason of the inconveniences which attended these limited inheritances, in order thereby to shorten their duration. *Id.*

But on the other hand, the nobility, who were willing to perpetuate their possessions in their own families, in order to put a stop to this practice, procured the statute of *Westminster the second*, 13 *Ed. 1. st. 1. c. 1.* (commonly called the statute *de donis conditionalibus*) to be made ; which pays a greater regard to the private will and intention of the donor, than to the propriety of such intention, or any public consideration whatsoever. By which it is enacted as follows :

“ Concerning tenements that many times are given upon  
 “ condition, that is to wit, where any giveth his land to any  
 “ man and his wife, and to the heirs begotten of the bodies  
 “ of the same man and his wife, with such condition expressed, that if the same man and his wife die without  
 “ heirs of their bodies between them begotten, the land so  
 “ given shall revert to the giver or his heir ; also in case  
 “ where one giveth land to another, and the heirs of his body  
 “ issuing, it seemeth hard to the givers and their heirs, that  
 “ their

“ their will being expressed in the gift is not observed ; in  
 “ which cases, after issue begotten and born between them,  
 “ (to whom the lands were given under such condition,)  
 “ heretofore such feoffees had power to aliene the land so  
 “ given, and to disinherit their issue of the land, contrary to  
 “ the minds of the givers, and contrary to the form ex-  
 “ pressed in the gift ; and further, when the issue of such  
 “ feoffee is failing, the land so given ought to return to the  
 “ giver or his heir, by form of the gift expressed in the deed,  
 “ though the issue (if any were) had died, yet by the deed  
 “ and feoffment of them to whom the land was so given upon  
 “ condition, the donors have been barred of their reversion,  
 “ which was directly repugnant to the form of the gift : it is  
 “ ordained, that the will of the giver, according to the form  
 “ in the deed of gift manifestly expressed, shall be from  
 “ henceforth observed ; so that they to whom the land was  
 “ given under such condition, shall have no power to aliene  
 “ the land so given, but that it shall remain unto the issue  
 “ of them to whom it was given after their death, or  
 “ shall revert to the giver or his heirs, on failure of such  
 “ issue.”

Upon the construction of this act, the judges determined that the donee had no longer a *conditional* fee simple, which became absolute, and at his own disposal, the instant any issue was born ; but they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a *fee tail*, (from the French word *tailler*, to cut, forasmuch as the heirs general are thereby cut off,) and vesting in the donor the ultimate fee simple of the land, expectant on the failure of issue ; which expectant estate is what we now call a *reversion*. 2 *Black. Ibid.*

## 2. *What may or may not be intailed.*

TENEMENTS is the only word used in the statute, which comprehends not only all corporeal inheritances, that are or may be holden, but also all incorporeal inheritances issuing out of any of those inheritances, or concerning, or annexed to, or which may be exercised with the same, though they be not in tenure ; therefore all these without question may be intailed ; as rents, estovers, commons, or other profits whatsoever, granted out of land ; or uses, offices, digni-

dignities, which concern lands or certain places, may be intailed within the said statute, because all these favour of the realty. 1 *Inst.* 19, 20.

But if the grant be of an inheritance merely personal, or to be exercised about chattels, and is not issuing out of land, nor concerning any land, or some certain place; such inheritances cannot be intailed, because they favour nothing of the realty: in these, the grantee hath a fee conditional, as they were before the statute; and by his grant or release, he may bar his heir, as he might have done at the common law; for that, in these cases, he is not restrained by the said statute. *Id.*

So a grant of an *annuity* to a man and the heirs of his body is void; so also a *lease* for years, for the chattel cannot be turned to an inheritance. But it is commonly assigned *in trust*, that the trustees shall permit the issue in tail to receive the profits, which is an intail in effect. 4 *Inst.* 87.

A *copyhold* cannot be intailed by virtue of the statute; but by special custom of the manor, it may be limited to the heirs of the body. 2 *Black. ibid.*

### 3. Of the several kinds of intail

ESTATES tail are either *general* or *special*. Tail *general* is, where lands are given to one and *the heirs of his body begotten*; which is called *tail general*, because, how often soever such donee in tail be married, his issue in general by all and every such marriage is, in successive order, capable of inheriting the estate tail by force of the gift, because that every such issue is of his body begotten. *Litt. sect.* 14.

In the same manner it is where lands are given to a woman, and to the heirs of her body, although she hath divers husbands, yet the issue which she may have by every husband may inherit as issue in tail by force of this gift; and therefore such gifts are called *general tails*. *Litt. sect.* 15.

Tenant in *tail special* is, where lands are given to a man and to his wife, and to *the heirs of their two bodies begotten*; in this case, none shall inherit by force of this gift, but those that be procreated between them two. And it is called *special tail*, because if the wife die, and he taketh another wife, and they have issue, the issue of the second wife shall

shall not inherit by force of this gift; nor also the issue of the second husband, if the first husband die. *Litt. sect. 16.*

Estates, either in *general* or *special* tail, may be further divided into tail *male*, or tail *female*; as if lands be given to a man and *his heirs male of his body begotten*, this is an estate in tail *male general*; but if to a man and the *heirs female of his body on his present wife begotten*, this is an estate in tail *female special*. And in case of an intail *male*, the heirs *female* shall never inherit, nor any derived from them; nor, on the other hand, the heirs *male*, in case of a gift in tail *female*. Thus if the donee in tail *male* hath a daughter, who dies leaving a son, such grandson, in this case, cannot inherit the estate tail; for he cannot derive his descent wholly by heirs *male*. And as the heir *male* must convey his descent wholly by males, so must the heir *female* wholly by females. And therefore, if a man hath two estates tail, the one in tail *male*, the other in tail *female*, and he hath issue a daughter, which daughter hath issue a son; this grandson can succeed to neither of the estates, for he cannot convey his descent wholly either in the male or female line. 2 *Black. Ibid.*

In gifts in tail, the word *heirs* is as necessary as in a fee simple; and the word *body*, (or other words that amount to it,) makes the tail, and may be restrained to males or females of the body. But a gift to heirs *male* or heirs *female*, is a fee simple, because it is not limited to what body. 1 *Inst.* 20. 26, 27.

But in a will, the word *body* is not absolutely necessary, in order to make an intail; but it may be sufficient, if it be to one and the *issue*, or the *children* of his body, or the like: for in making his will, a man hath not always opportunity to consult with able counsel. 1 *Inst.* 27.

If lands are given to a man and his wife, and to the heirs of the body of the man, the husband hath an estate in general tail, and the wife an estate for life; because the word *heirs* relates generally to the body of the husband. And if the estate is made to the husband and wife, and to the heirs of the body of the wife by the husband begotten, there the wife hath an estate in special tail, and the husband for term of life; because the word *heirs* relates to the body of the wife to be begotten by that particular husband. But if lands are given to husband and wife, and to the heirs of their two bodies, both of them have an estate in special tail; because the word



*heirs*, or the inheritance, is not limited to one more than to the other. Therefore by observing to whom the word *heirs* relates, whether to both or one of them, it may be seen where the inheritance is lodged. *Litt. sect.* 26. 28.

#### 4. *Incidents of intail.*

THE incidents to a tenancy in tail under the statute aforesaid, are chiefly these : 1. That a tenant in tail may commit *waste* on the estate tail, by felling timber, pulling down houses, or the like, without being impeached, or called to account for the same. 2. That the wife of tenant in tail shall have her *dower* or thirds of the estate tail. 3. That the husband of a female tenant in tail may be tenant by the *curtesy* of the estate tail. 2 *Black. ibid.*

#### 5. *Intail how barred or destroyed.*

THE inconveniences arising from the said statute *de donis*, by degrees became intolerable. *Children* grew disobedient, when they knew they could not be set aside ; *farmers* were ousted of their leases by tenant in tail ; for if such leases had been valid, then under colour of long leases, the issue might in effect have been disinherited ; *creditors* were defrauded of their debts, for if tenant in tail could have charged his estate with their payment, he might have defeated his issue by mortgaging it for as much as it was worth ; *treasons* were encouraged, as estates tail were not liable to be forfeited longer than for the tenant's life ; and innumerable *latent intails* were produced, to deprive purchasers of the lands they had fairly bought. But as the nobility were always fond of this family law, (as it may very properly be styled,) there was little hope of procuring the repeal of it by the legislature. And therefore the application of fictitious *recoveries* was given way to by the judges, and at last in the 12 *Ed.* 4. solemnly declared to be a sufficient bar of an estate tail. By the 4 *Hen.* 7. c. 24. and 32 *Hen.* 8. c. 36. a *fine* was declared to be sufficient to bar an estate tail. By the 26 *Hen.* 8. c. 13. estates tail are made subject to be forfeited for *treason*. By the 32 *Hen.* 8. c. 28. *leases* made by tenant in tail for twenty-one years, or three lives, (under certain restrictions,) are allowed to bind the issue. By the 33 *Hen.* 8. c. 39. estates tail are rendered liable to be charged for payment of *debts due to the crown*, by record or specialty. And by the 21 *J.* c. 19. they  
are

are subjected to be sold for the debts contracted by a bankrupt.

Estates tail being thus by degrees unfettered, are now reduced again to almost the same state, even before issue born, as conditional fees were in at the common law, after the condition was performed by the birth of issue. *Id.*

6. *Tenant in tail after possibility of issue extinct.*

TENANT in tail after possibility of issue extinct, is where one is tenant in special tail, and a person, from whose body the issue was to spring, dies without issue; or having left issue, that issue becomes extinct: in either of these cases, the surviving tenant in special tail becomes tenant in tail after possibility of issue extinct. 2 *Black. ubi supra.*

TALES, (*Lat.*) is used in the law for a supply of men impanelled on a jury and not appearing, or on their appearance challenged and disallowed; when the judge upon motion orders a supply to be made by the sheriff of one or more *such* persons present in court, to make up a full jury.

*Tales* are of two sorts: *tales de circumstantibus*, and a *decem tales*. *Tales de circumstantibus*, is where a full jury doth not appear at *nisi prius*, or so many are challenged that there is not a full jury; then on the prayer of the plaintiff's or defendant's counsel, the judge will grant this *tales*, which the sheriff returns immediately in court. A *decem tales*, is when a full jury doth not appear on a trial at bar, and is a writ to the sheriff to return ten such as the other: on a trial at bar, the court cannot grant a *tales de circumstantibus*, but will grant a *decem tales*, returnable in some convenient time, the same term, to try the cause. 2 *Lill. Abr.* 552.

A *tales* is not to be granted where the whole jury is challenged; but the whole panel, if the challenge be made good, is to be quashed, and a new jury returned; for a *tales* consists but of some persons to supply the places of such of the jurors as were wanting of the number of twelve, and is not to make a new jury. *Id.*

TALLAGE, cometh of the French word *tailler*, to share or cut out a part; and figuratively is understood, when the king or any other hath a share or part of the annual revenue of

his lands, or puts any charge or burden upon another: so as *tallage* is a general word, and includes all subsidies, taxes, tenths, fifteenths, impositions, or other burdens or charge put or set upon any man. 2 *Inst.* 532.

**TANNER.** By the 24 *G. 3. c. 41.* every tanner shall take out a licence annually from the officers of excise.

**TARE and TRET.** *Tare* is an allowance in merchandize, made to the buyer, for the weight of the box, bag, or casks, wherein the goods are packed; and *tret* is a consideration in the weight, for waste in emptying and re-selling the goods, by dust, dirt, breaking, or the like.

**TAWER.** By 24 *G. 3. c. 41.* every tawer shall take out a licence annually from the officers of excise.

**TEA.** By the 27 *G. 3. c. 13.* a duty is imposed on all tea imported, according to the price at which the same shall be sold at the public sales of the *East India* company. And by several statutes, regulations are made respecting the importing, storing, exporting, and true manufacturing of tea, which is to be under the management of the officers of the customs and excise. And by the 20 *G. 3. c. 53.* every person who shall trade in or sell any tea, shall take out a licence annually from the officers of excise.

**TEMPLARS,** were an order of knights, so called from having their first residence in some apartments adjoining to the *Temple* at *Jerusalem*. They were instituted in the year 1118. Their business was to guard the roads for the security of pilgrims in the Holy Land. They came into *England* in the reign of king *Stephen*; and in a little time obtained great possessions, so that at length their wealth and power were thought too great: they were accused of horrid crimes, and every where imprisoned; their estates were seized, and their order finally suppressed by pope *Clement* the fifth, in the year 1312.

**TEMPORALTIES,** of a bishop, are all such things as the bishops have by livery from the king, as castles, manors, lands, tenements, and such other certainties, of which the king is answered during the vacation. *Watf. c. 40.*

And

And upon the filling of a void bishopric, not the new bishop, but the king, by his prerogative, has the temporalities thereof, from the time that the same became void, to the time that the new bishop should receive them from the king. *Id.*

This revenue of the king was anciently very considerable; but now, by a customary indulgence, it is almost reduced to nothing: for at present, as soon as the new bishop is consecrated and confirmed, he usually receives from the king the restitution of his temporalities intire and untouched; and then, and not sooner, he has a fee simple in his bishopric, and may maintain an action for the profits. 1 *Black.* 283.

TENANT HOLDING OVER. See SUFFERANCE.

TENANT TO THE PRÆCIPE, is he against whom the writ of *præcipe* is brought, in suing out a common recovery, and must be the tenant, or seized of the freehold.

TENANT AT WILL. See WILL, TENANT AT.

#### TENDER:

A MAN may *tender* money in purses or bags, without shewing or telling the same; for he doth that which he ought; namely, to bring the money in purses or bags, which is the usual manner to carry money in; and then it is the part of him who is to receive it, to put it out and tell it. 1 *Inst.* 208.

He that pleads a tender at the time and place, and no one there to receive, must shew at what time of the day he was there, and how long he staid; for he ought to shew that he has done all that could be done on his part to accomplish what by his agreement he was bound to do: and if the payment is mentioned to be on such a day, he ought to shew that he continued ready to pay at the last instant of that day so long as a man can see to count money. 2 *Salk.* 624.

After tender and refusal of a debt, if the creditor will harass the debtor with an action, it is requisite for the defendant to acknowledge the debt, and plead the tender; adding, that he has always been ready, and still is ready, to discharge it; for a tender by the debtor, and refusal by the creditor,



ditor, will in all cases discharge the costs, but not the debt itself; though in some particular cases the creditor will totally lose his money. 3 *Black.* 303.

If an obligation of 100*l.* be made, with condition for the payment of 50*l.* at a day, and at the day the obligor tender the money, and the obligee refuses the same, yet in an action of debt upon the obligation, if the defendant plead tender and refusal, and that he is yet ready to pay the money, and tender the same in court; if the plaintiff will not then receive it, but take issue upon the tender, and the same be found against him, he hath lost the money for ever. 1 *Inst.* 207.

But if a man be bound in two hundred quarters of wheat, for delivery of one hundred quarters, he shall not plead that he is still ready to deliver them; for they are perishable goods, and it is a charge for the obligor to keep them. *Id.*

So if a man make an obligation of 100*l.*, with condition for delivery of corn, timber, or the like, or for the performance of an award, or doing of any act, this is collateral to the obligation; that is to say, is not parcel of it, and therefore a tender and refusal is a perpetual bar. *Id.*

And in such cases the obligor is not bound to carry the corn, timber, or the like, about, and seek the obligee; but the obligor, before the day, must go to the obligee, and know where he will appoint to receive it, and there it must be delivered. 1 *Inst.* 210.

Payment of money into court is a kind of tender; which is done by paying into the hands of the proper officer of the court, as much as the defendant acknowledges to be due, together with the costs already incurred, in order to prevent the expence of any farther proceedings. And if, after the money is paid in, the plaintiff proceeds in his suit, it is at his own peril; for if he doth not prove more due than is so paid into court, he shall be nonsuited, and pay the defendant's costs: but he shall still have the money so paid in, for that the defendant hath acknowledged to be his due. 3 *Black.* 304.

And where money is paid into court, so much is ordered by the court to be struck out of the declaration. *Bur. Mansf.* 1773.

**TENEMENT**, in its vulgar acceptation, is applied only to houses and other buildings; but in its original, proper, and legal sense, it signifies every thing that may be *holden*, provided it be of a permanent nature, whether it be of a substantial, or of an unsubstantial and ideal kind. Thus *frank-tenement*, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, and the like; and, as lands and houses are tenements, so is an advowson a tenement; and a franchise, an office, a right of common, a peerage, or other property of the like unsubstantial kind, are all of them, legally speaking, tenements. 2 *Black.* 17.

**TENENDUM** (to hold) in deeds, was formerly used to signify the tenure by which the estate granted was to be holden; as to hold by knight's service, in burgage, in free socage, and the like. But all these being now reduced to free and common socage, the tenure is not usually specified. Before the statute of *quia emptores*, 18 *Ed.* 1. it was also sometimes used to denote the lord of whom the land should be holden; but the statute directing all future purchases to hold, not of the immediate grantor, but of the chief lord of the fee, this use of the *tenendum* hath been also antiquated, though for a long time after we find it mentioned in ancient charters, that the tenements shall be holden of the chief lords of the fee; but as this expressed nothing more than the statute had already provided for, it gradually grew out of use. 2 *Black.* 298. But in several customary manors, it is usual to set forth of whom the land is to be holden, and by what services.

**TENOR**, in case of a libel, imports a transcript or copy of the part in dispute; and to say *according to the purport*, is not sufficient in case of a prosecution.

**TENTHS**, were anciently a temporary aid granted by parliament, and was the real tenth of all the moveables belonging to the subject; such moveables, or personal estate, being much less considerable then, than what they are at present. The clergy also, in their convocations, granted the tenth of all their ecclesiastical livings.

**TENURE**, is the manner whereby lands or tenements are *holden*, or the service that the tenant owes

to his lord. And there can be no tenure without some service, for the service makes the tenure. 1 *Inst.* 1. 93.

TERM, *terminus*, is a limitation of *time*; as an estate for *term of life*; a *term day* for payment of rent: but more particularly it is used to signify the time wherein the courts of law at *Westminster* are open for all that complain of wrongs or injuries, and seek their right by course of law. Of these terms there are four in every year, denominated from some festival or saint's day immediately preceding; namely, the terms of *St. Hilary*, of *Easter*, of the *Holy Trinity*, and of *St. Michael*.

There are in each of these terms stated days, called *days in bank*; that is, days of appearance in the court of common pleas, called usually *bancum*, or *commune bancum*, to distinguish it from *bancum regis*, or the court of king's bench. They are generally at the distance of about a week from each other, and regulated by some festival of the church. On some of these days in bank, all original writs must be made returnable, and therefore they are generally called the *returns* of that term. 3 *Black.* 277.

The first return in every term is, properly speaking, the first day in that term; and thereon the court sits to take *essoigns*, or excuses, for such as do not appear according to the summons of the writ; wherefore this is usually called the *essoign day* of the term. But the person summoned hath three days of grace, beyond the return of the writ, in which to make his appearance; and if he appears on the fourth day inclusive, *quarto die post*, it is sufficient. Therefore, at the beginning of each term, the court doth not sit for dispatch of business till the fourth day, and in *Trinity* term, by statute 32 *H. 8. c. 21.* not till the sixth day. *Id.* 278.

All the term, in construction of law, is accounted but as one day to many purposes; for a plea that is put in the last day of a term, is a plea of the first day of the term; and a judgment on the last day of the term is as effectual as on the first day: and for this reason, the judges may alter their judgments at any time during the same term,

TERRETENANT, is he who has the legal property and possession of the land in trust for him to whose use the land was granted.

TEST

**TEST ACT**, is an act of parliament, 25 C. 2. c. 2. for preventing papists from being appointed to offices in the state; whereby it is enacted, that every person who shall be admitted to any office, civil or military, shall, within three months after his admission, receive the sacrament of the Lord's Supper, according to the usage of the church of *England*, in some public church on the Lord's-day immediately after divine service and sermon. And in the court where, in pursuance of such promotion, he takes the oaths of allegiance, supremacy, and abjuration, he shall, at the same time, deliver a certificate of such his having received the sacrament, under the hands of the minister and churchwardens, and make proof of the truth thereof by two witnesses: and he shall also at the same time make and subscribe the declaration against transubstantiation (which is emphatically called the *test*).

**TESTAMENT**, is a voluntary disposition of what one would have to be done, concerning his goods and chattels, real and personal, after his decease; with the appointment of an executor. For which, see **WILLS**.

**TESTATUM CAPIAS**, is a writ in personal actions, where the defendant cannot be arrested upon a *capias* in the county where the action is laid, but is returned *non inventus* by the sheriff; then this writ shall be sent out into any other county where such person is thought to be, or to have wherewith to satisfy; and this is termed a *testatum*, by reason the sheriff hath *testified* that the defendant was not to be found in his bailiwick. But it is now usual, for saving trouble, time, and expence, to make out a *testatum capias* at the first, supposing a former *capias* to have been granted, which in fact never was. And this fiction being beneficial to all parties, is readily acquiesced in, and is become the settled practice. 3 *Black.* 283.

**TESTE**, is a word generally used in the last part of all writs, wherein the date is contained, which runs *teste meipso*, if it is an original writ; or *teste* the lord chief justice, if a judicial one.

**THEFTBOTE**, (from the Saxon words *theft*, and *bote*, boot, or amends,) is where one not only knows of a felony, but



but takes his goods again, or other amends, not to prosecute.  
1 *Haw.* 125.

This is frequently called compounding of felony; and formerly was held to make a man an accessory; but is now punished only by fine and imprisonment. *Id.*

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shewed to the thief. *Id.*

**THIRDBOROUGH.** When the kingdom was first divided into hundreds and tithings, an officer was set at the head of each tithing in the nature of constable, called the *headborough*; but whereas, in some places, only one headborough was set over three tithings, he was therefore called the *thirdborough*.

**THOROUGH TOLL,** is when a town prescribes to have toll for such a number of beasts, or for every beast that goeth through their town, or over a bridge or ferry, maintained at their cost. *Terms of the Law.*

And this requires a consideration to be shewn, to support the demand of it, because it is against common right; for there is a difference between prescriptions for private rights, and prescriptions that affect the public: in the former case, a consideration may be implied; but in the latter, a sufficient consideration must be proved. *Bur. Mansf.* 1402.

**THORP,** Sax. a village.

**THREATENING LETTER.** If any person shall send any letter threatening to accuse any other person of a crime punishable with death, transportation, pillory, or other infamous punishment, with a view to extort money from him, he shall be punished at the discretion of the court, with fine, imprisonment, pillory, whipping, or transportation, 30 G. 2. c. 24.

And if any person shall send any letter threatening to kill any of the king's subjects, or to fire their houses, out-houses, barns, stacks of corn or grain, hay or straw, he shall be guilty of felony without benefit of clergy. 9 G. 2. c. 22. 27 G. 2. c. 15.

**TILES.**

**TILES.** By the 27 G. 3. c. 13. several duties are imposed on tiles made in *Great Britain*: and by several statutes regulations are made for the true making of tiles, and the surveying thereof by the officers of excise.

**TIMBER TREES,** are properly oak, ash, and elm. In some particular countries, by local custom, other trees, being commonly there made use of for building, are considered as timber. 2 *Black.* 28. Of these, being part of the freehold, larceny cannot be committed; but if they be severed at one time, and carried away at another, then the stealing of them is larceny. And by several late statutes, the stealing of them, in the first instance, is made felony, or otherwise subject to a pecuniary forfeiture. 4 *Black.* 233. 247.

**TIME.** If one binds himself to another to pay a sum of money, and doth not say at what time, the obligation is good, and the money is to be paid presently; that is, in convenient time. And yet, in case of a condition of a bond or obligation, there is a diversity between a condition of an obligation which concerns the doing of a *transitory act* without limitation of any time, as payment of money, delivery of writings, or the like, for there the condition is to be performed presently, that is, in convenient time; and when, by the condition of the obligation, the act that is to be done to the obligee is of its own nature *local*, for there the obligor (no time being limited) hath time during his life to perform it, as to make a feoffment, or the like, if the obligee doth not hasten the same by request. 1 *Inst.* 208.

When the obligor, feoffor, or feoffee, is to do a sole act or labour, as, for instance, to go to *Rome*, in such case he hath time during his life, and cannot be hastened by request. And so it is if a stranger to the obligation or feoffment were to do such an act, he hath time to do it at any time during his life. *Id.*

**TIPSTAFF,** an officer appointed by the marshal of the court of king's bench to attend upon the judges, with a kind of rod or *staff tipped* with silver, to take prisoners into custody.

#### TITHES:

1. **TITHES** are the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands,

lands, and the personal industry of the inhabitants. And hence they are usually divided into three kinds; *prædial*, *mixt*, and *personal*. *Prædial* tithes are such as arise merely and immediately from the ground; as grain of all sorts, hay, wood, fruits, herbs; for a piece of land or ground being called in Latin, *prædium*, (whether it be arable, meadow, or pasture,) the fruit or produce thereof is called *prædial*, and consequently the tithe payable for such annual produce is called a *prædial* tithe. *Mixt* tithes are those, which arise not immediately from the ground, but from things immediately nourished by the ground; as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chickens, milk, cheese, eggs. *Personal* tithes, are such as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain, after charges deducted. *Watf. c. 59.*

2. Tithes, with regard to value, are divided into *great* and *small*: *great* tithes; as corn, hay, wood: *small* tithes; as the *prædial* tithes of other kinds, together with those that are *mixt* and *personal*.

3. Tithes of common right belong to that church within the precincts of whose parish they arise. But one parson may prescribe to have tithes within the parish of another; and this is what is called a *portion* of tithes. *Gibf. 663.*

The reason whereof may be, the lord of a manor's having his estate extending into what is now apportioned into distinct parishes; for there were tithes before the present distribution of parishes took place.

Tithes in extraparochial places, that is, within the compass of no certain parish, belong to the king; and he may grant them to whomsoever he pleases.

4. Of things that are *feræ naturæ*, no tithe shall be paid; therefore no tithe is due for fish taken out of the sea, or out of a river, unless by custom; so neither for the same reason is any tithe due of deer, conies, or the like. But if the tithe thereof be due by custom, it must be paid. *2 Inst. 651.*

Of *barren land*, converted into tillage, no tithe shall be paid for the first seven years: but if it be not barren in its own nature, as if it be woodland grubbed and made fit for tillage, tithes shall be paid presently; for woodland is fertile and not barren. *Id. 655.*

*Glebe lands*, in the hands of the parson, shall not pay tithe to the vicar; nor being in the hands of the vicar, shall they pay tithe to the parson; because the church shall not pay tithe

tithe to the church. But if the parson lets his rectory, reserving the glebe lands, he shall pay the tithes thereof to his lessee. *Gibf. 661.*

5. Exemptions from tithes are of two kinds; either to be exempted from paying any tithes at all, or from paying tithes in kind. The former is called *de non decimando*: the latter, *de modo decimandi*.

6. Prescription *de non decimando* is, to be free from the payment of tithes, without any recompence for the same. Concerning which, the general rule is, that no layman can prescribe in *non decimando*; that is, to be discharged absolutely of the payment of tithes, and to pay nothing in lieu thereof; unless he begin his prescription in a religious or ecclesiastical person. But all spiritual persons, as bishops, deans, prebendaries, parsons, and vicars, may prescribe generally in *non decimando*. *1 Roll's Abr. 653.*

7. A *modus decimandi*, commonly called by the single name of *modus* only, is, where there is by custom a particular manner of tithing different from the general law of taking tithes in kind. This is sometimes a pecuniary compensation, as so much an acre for the tithe of land: sometimes it is a compensation in work and labour; as that the parson shall have only the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him: sometimes in lieu of a large quantity, when arrived to greater maturity; as a couple of fowls in lieu of tithe eggs, and the like. Any means, in short, whereby the general law of tithing is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or special manner of tithing. *2 Black. 29.*

8. To make a *modus* or prescription good, several qualifications are requisite. As first, it must be supposed to have had a *reasonable commencement*, as that at the time of the composition the *modus* was the real value of the tithes, though by the decrease in the value of money, it is now become much less.

It must be something for the *parson's benefit*: therefore the finding straw for the body of the church, the finding a rope for a bell, the paying 5*s.* to the parish clerk, have been adjudged not to be good. But it is a good *modus* to be discharged, that he hath been used time out of mind to employ the profits for the repair of the chancel, for the parson hath a benefit by that.

It



It must not be *one tithe paid in lieu of another*; as it must not be to pay tithes of other kinds, to be discharged of the tithes of dry cattle, and must not be so much for every cow and calf, for the tithe of herbage.

It must be something in its kind *different from the thing that is due*; and therefore a load of hay in lieu of tithe hay, or certain sheaves of corn for all tithes of corn, is not a good prescription.

A modus must be *certain*: so a prescription to pay a penny, or thereabouts, for every acre of land, is void for the uncertainty. And heretofore it was held, that if a precise day of payment is not alleged, the modus shall be ill; but now it is holden, that where an annual modus hath been paid, and no certain day for the payment thereof is limited, the same shall be due and payable on the last day of the year.

A modus must be *ancient*; and therefore if it is any thing near the value of the tithe, it will be supposed to be of late commencement, and for that reason will be set aside.

It must be *durable*, for the tithe in kind being an inheritance certain, it is reasonable that the recompence for it should be as durable; for which reason, a certain sum to be paid by the inhabitants of such an house hath been set aside, because the house may go down, or none may inhabit it.

It must be *constant* and without interruption; for if there have been frequent interruptions, no custom or prescription can be obtained. But after it hath been once duly obtained, a disturbance for ten or twenty years shall not destroy it.

9. When a common is divided and inclosed, a modus shall only extend to such tithes as the common yielded before inclosure; such as the tithes of wool, lambs, or agistment; but not to the tithes of hay and corn, which the common, whilst it was common, did never produce. *Burr. Mansf.* 1375.

10. The parson cannot come himself and set out his tithes, without the consent of the owner; but he may attend and see it set out; yet the owner is not obliged to give him notice when he intends to set it out, unless it be by special custom. *Id.* 1891.

11. After it is set out, the care thereof, as to wasting or spoiling, rests upon the parson, and not upon the owner of

the land; but the parson may spread, dry, and prepare his corn, hay, or the like, in any convenient place upon the ground, till it be sufficiently weathered and fit to be carried into the barn.

12. And he may carry his tithes from the ground, either by the common way, or such way as the owner of the land uses to carry away his nine parts.

If the parson suffers his tithe to stay too long upon the land, the owner may distrain the same as doing damage; or he may have an action upon the case: but he cannot put in his cattle and destroy the corn or other tithe, for that would be to make himself judge what shall be deemed a convenient time for taking it away. *L. Raym.* 189.

13. In the ecclesiastical court, the parson may sue for and recover the tithes themselves, or an equivalent for the same, and also double value. In the courts of common law, he cannot recover the tithes themselves, but may sue for and recover treble value, which is tantamount to the tithes, and double value in the ecclesiastical court.

But it rarely happens, that tithes are sued for at all in the ecclesiastical court; for if the defendant pleads any custom, modus, composition, or other matter, whereby the right of the tithe comes in question, this takes it out of the jurisdiction of the ecclesiastical judges; for the law will not suffer the existence of such a right to be decided without the verdict of a jury.

But where the tithes are any thing considerable, they are frequently sued for in the courts of equity.

Small tithes, not exceeding the value of 40*s.* and Quakers tithes, great or small, not exceeding the value of 10*l.* may be recovered before the justices of the peace.

**TITHING.** Anciently, for the better conservation of the peace, and more easy administration of justice, every hundred was divided into ten districts or tithings, consisting of ten men with their families; and at the head of each tithing was appointed an officer, called the *tithingman*, being much of the nature of what is now called the *constable*.

**TITHINGMAN**, was anciently at the head of the tithing or decennary, which consisted of ten men with their families, and is now in the nature of constable. But, in some places, there is both a tithingman and constable, where the tithingman is as it were a deputy to execute the office in the constable's

constable's absence: but there are some things which a constable hath power to do, that tithingmen cannot intermeddle with; for the constable may do whatever the tithingman may do; but not on the contrary, the tithingman not having an equal power with the constable. But in places where there is no constable, the office and authority of tithingman seems to be all one under a different name.

**TITLE, BUYING OF.** It is an high offence at common law to buy or sell any doubtful title to disputable lands, to the intent that the buyer may carry on the suit, which the feller doth not think it worth his while to do; all which practices ought by all means to be discountenanced, as manifestly tending to oppression. 1 *Haw.* 261.

And by statute 32 *H. 8. c. 9.* no person shall sell or purchase any pretended right or title to land, unless the vendor hath received the profits thereof for a year before such grant, or hath been in actual possession of the land, or of the reversion or remainder; on pain that both purchaser and vendor shall each forfeit the value of such lands to the king and the prosecutor.

When a person will recover any thing from another, he must make out and prove a better title than the other hath; otherwise it will not be enough to destroy his title. For it is not allowed for the party to forsake his own title, and fly upon the other's; for he must recover by his own strength, and not by the other's weakness. *Hob.* 103.

**TOBACCO AND SNUFF.** No person shall plant any tobacco, on forfeiture thereof; and also 12*l.* for every rod or pole. 12 *C. 2. c. 34.* 15 *C. 2. c. 7.*

And by the 29 *G. 3. c. 68.* every manufacturer of, or dealer in tobacco or snuff, shall take out a licence annually from the officers of excise.

And by several statutes, regulations are made respecting the manufacturing of tobacco and snuff, which are also put under the management of the officers of excise.

**TOFT,** a messuage, or rather a place or piece of ground where a house formerly stood, but is decayed or casually burned, and not rebuilt.

**TOLERATION,** act of. See **DISSENTERS.**

**TOLL**, *tolnetum*, signifies generally a payment in markets and fairs, for goods sold therein.

\* But there are also divers other kinds of tolls : as,

*Turn toll*, where toll is paid for beasts that are driven to be sold at market, and *return* unfold.

*Toll travers*, where one claimeth to have toll for every beast that *traverseth*, or is driven over his ground.

*Thorough toll*, where a town prescribes to have toll for every beast that goeth *through* the town, or over a ferry, or bridge, maintained at their cost.

There is also *in-toll* and *out-toll*, mentioned in ancient charters.

Toll must have a reasonable cause of commencement, as in consideration of repairs or the like; otherwise the franchise is illegal and void. 2 *Black.* 38.

To **TOLL AN ENTRY**, is to defeat or *take away* the right of entry into lands and tenements.

**TOLT**, is a precept from the sheriff for removing a writ of right from the court baron into the county court; and is so called, because it takes (*tollit*) the cause out of the court of the lord of the manor. And from the county court it may be removed into the king's courts, by writ of *pone* or *recordari facias*, at the suggestion of either party that there is a defect of justice.

**TOMBSTONES.** See **MONUMENTS.**

**TONNAGE**, *tunnage*, a duty on goods imported or exported, at the rate of so much a ton.

**TOR**, Sax. a mount or hill.

**TORRALE**, (from *torreo*, to roast or dry,) a kiln or malt-house. So *secta ad torrale*, was suit to the lord's kiln, with a prohibition to the tenants to dry their corn or malt elsewhere.

**TORT**, from the Latin, *tortus*, is a French word for injury or wrong; as *de son tort*, of his own wrong. It is properly called *tort*, because it is *wrested* or crooked. So *tortfeasor*, is a wrong doer or trespasser.

VOL. II.

C c

**TOURN.**



**TOURN.** The sheriff's tourn is the king's court of record, holden before the sheriff, for the redressing of common grievances within the county. 2 *Haw.* 55.

And because the sheriff did go in circuit twice every year, throughout every hundred within the connty, it was called the *tourn*, which signifies a circuit or perambulation. 2 *Inst.* 70.

The times for performing this perambulation are to be within a month after *Easter*, and a month after *Michaelmas*. At which courts, all persons, (except peers, clergymen, tenants in ancient demesne, and those who have hundreds or leets of their own,) being above the age of twelve years, are bound to attend, in order to make inquiry of all common grievances, and to take the oath of allegiance to the king.

The estate to qualify a juryman in the tourn, is 20s. a year freehold, or 26s. 8d. customary or copyhold.

It seems to be settled, that a distress is incident of common right to every fine and amercement in the tourn, and that the offender's goods may be distrained in any lands within the precinct of the court, or in the highway; and that the goods distrained may be sold; or the fine may be recovered by action of debt. 2 *Haw.* 60, 1.

But the sheriff by several statutes is restrained from trying indictments found in the tourn; but he must deliver them to the next session of the peace. Since which restrictions, the business of the tourn hath declined, and is now almost wholly devolved upon the quarter sessions.

**TOUT TEMPS PRIST**, is a plea to an action, whereby, after tender and refusal of a debt, the defendant acknowledges the debt, and pleads the tender; adding, that he has always been ready, *tout temps prist*, and still is ready, *uncore prist*, to discharge it. For a tender by the debtor, and refusal by the creditor, will discharge the costs, though not the debt itself. 3 *Black.* 303.

**TOWN**, villa, or *vicus*, was a precinct anciently of ten families, upon which account they are sometimes called *tithings*. There ought to be in every town a petty constable, or tithingman, or both. If a town is decayed, so that it hath no house left, yet it is a town in law. *Wood. Introduction.*

TRAN-

**TRANSITORY ACTION**, is an action that is not confined to the proper county; as for debt, detinue, slander, or the like, which are injuries that might happen any where; whereas a *local* action is restricted to that particular county where the injury was actually done; as for waste, trespass, or the like. See **LOCAL ACTION**.

**TRANSPORTATION** of offenders, is the banishing or sending them away into another country. By the 4 G. c. 11. 6 G. c. 23. and 8 G. 3. c. 15. persons convicted of felony within the benefit of clergy, may, instead of burning in the hand or whipping, be ordered to be transported into some of his majesty's plantations in *America*, [and by the 19 G. 3. c. 74. and 24 G. 3. c. 56. to any place beyond the seas,] for seven years. And persons convicted of offences excluded from the benefit of clergy, to whom the king shall be pleased to extend mercy on condition of transportation, may be transported for fourteen years, or such other term as shall be made part of the condition.

And by the 19 G. 3. c. 74. instead of transportation, penitentiary houses may be erected in *Middlesex, Essex, Kent, or Surry*, for confining and employing in hard labour, six hundred male, and three hundred female convicts. And also ships may be provided for the more effectual punishment of atrocious offenders, to be employed in hard labour in raising sand, soil, or gravel, from and cleansing the river *Thames*, or any other navigable river, or any port or haven, or in any other public work upon the banks thereof; and such offenders are to be fed during the time with bread, and any coarse or inferior food, and water, or small beer; with power to the king, on their good behaviour, to shorten the term of their confinement.

**TRAVERSE**, took its name from the French *de traverse*, which is no other than *de transverso* in Latin, signifying *on the other side*; because as the indictment on the one side charges the party, so he on the other side cometh in to discharge himself. To traverse an indictment therefore, is to take issue upon the chief matter thereof; which is the same as if one shall say, *to make contradiction, or to deny the point of the indictment*; as in a presentment against a person for a highway overflowed with water, for default of scouring a ditch, which he and they whose estate he hath in certain lands there have used to scour or cleanse; such person may traverse

either the matter; namely, that there is no highway there, or that the ditch is sufficiently scoured; or otherwise he may traverse the cause; namely, that he hath not that land, or that he and they whose estate he hath, have not used to scour the ditch. *Lamb. 540.*

A plea will be ill which neither traverseth nor confesseth the plaintiff's title. And every matter of fact, alleged by the plaintiff, may be traversed by the defendant, but not matter of law, or where it is part matter of law, and part matter of fact: nor may a record be traversed which is not to be tried by a jury. *Cro. Eliz. 755.*

A traverse must be always made to the substantial part of the title. Where an act may indifferently be intended to be at one day or another, there the day is not traversable. In an action of trespass, generally the day is not material; though if a matter be to be done upon a particular day, there it is material and traversable. *2 Roll's Rep. 37.*

TREASON, is a word borrowed from the French, and imports a *betraying*, *treachery*, or breach of faith and allegiance. *4 Black. 75.*

Treason, generally speaking, is intended not of petit treason, but of high treason only. *1 Hale's Hist. 316.*

By the statute 25 *Ed. 3. ff. 5. c. 2.* all treasons, which had been uncertain before, were settled. Which statute by *1 Mar. ff. 1. c. 1.* is reinforced, and again made the only standard of treason; and all statutes between the said statutes of 25 *Ed. 3.* and *1 Mary*, which made any offences high or petit treason, or misprision of treason, are abrogated; so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of 25 *Ed. 3.* or made such by some statute since the *1 Mary.*

The statute of 25 *Ed. 3.* is to the following effect:—Where divers opinions have been before this time, in what case treason shall be laid, and in what not; the king, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to say, 1. When a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir. 2. If a man do violate the king's companion, (that is, his wife, 3 *Inst. 9.*) or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir. 3. If a man do levy war against our lord the king in his realm.

4. If

4. If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere. 5. If a man counterfeit the king's great or privy seal. 6. If a man counterfeit the king's money; or bring false money into the realm counterfeit to the money of *England*. 7. If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. And if any other case, supposed to be treason, which is not above specified, doth happen before any judge, he shall tarry, without going to judgment, till the cause be declared before the king and parliament, whether it ought to be treason or other felony.

New treasons, created since the statute 1 *Mary*, may be comprehended under three heads: 1. Such as relate to the *coin*, by way of inforcement of the statute of the 25 *Ed.* 3. 2. Such as relate to *papists*. 3. Such as relate to the security of the *protestant succession* in the house of *Hanover*.

In high treason there are no accessaries, but all are principals; and therefore whatsoever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in high treason. 3 *Inst.* 9. 21.

A person indicted for high treason whereby corruption of blood shall be made, or for misprision of such treason, (except for counterfeiting the coin, the great seal, privy seal, privy signet, or sign manual,) shall have a copy of the indictment, a list of the jurors, and also of the witnesses, delivered to him ten days before the trial. 7 *An. c.* 21.

The treason ought to be manifested by an *overt act*, or open deed. How far *words* shall amount to such overt act hath formerly been doubted; but now it seems to be agreed, that words spoken amount only to a high misdemeanor, and no treason. 4 *Black.* 80.

In order to convict an offender, there must be two witnesses, either to the same overt act, or one to one overt act, and the other to another overt act of the same treason. 7 *W. c.* 3.

The judgment for high treason, (not relating to the coin,) is, that he be carried back to the place from whence he came, and from thence be drawn (that is, not to be carried, or walk, though usually a sledge or hurdle is allowed, to preserve the offender from the torment of been dragged on the



ground or pavement,) to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burned before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure. The judgment of a woman for high treason, is to be drawn and burned. 3 *Inst.* 211. 2 *Haw.* 443.

In which judgment is implied forfeiture of lands and goods to the king, loss of dower, and corruption of blood. But by the statute 17 *G. 2. c.* 39. after the death of the pretender, and of his eldest and every other son, no attainder for treason shall disinheret or prejudice any heir or other person, other than the offender during his life,

*Petit treason.*

By the same statute 25 *Ed. 3.* there is another manner of treason; when a servant slayeth his master, or a wife her husband, or a man, secular or religious, slayeth his prelate: the judgment in which case is, that the offender shall be drawn to the place of execution, and there hanged by the neck till he be dead. The judgment against a woman is, that she shall be drawn to the place of execution, and there burned. The consequence of this attainder is, forfeiture of lands (to the lord of the fee) and of goods; loss of dower; and corruption of blood. Although there can be no accessaries in high treason, yet in petit treason there may be accessaries both before and after. And accessaries before the fact are ousted of clergy by several statutes; but accessaries after the fact, have their clergy in all cases of petit treason, for no statute takes it from them. 2 *Haw.* 444. 2 *Hale's Hist.* 342.

*Misprision of treason.*

MISPRISION of treason, is when one knows of any treason, though no party nor consenting to it, yet conceals it, and doth not reveal it in convenient time. The judgment in which case, is imprisonment for life, forfeiture of goods for ever, and the profits of lands during life. But misprision of petit treason is punishable only by fine and imprisonment. 3 *Inst.* 36. 1 *Hale's Hist.* 375.

**TREASURER.** By statute 12 G. 2. c. 29. the justices of the peace in sessions may appoint treasurers from time to time of the county rates, and allow them salaries not exceeding 20*l.* a year; which treasurers shall keep books of entries of all receipts and disbursements by them made, and account for the same to the said justices in sessions.

**TREASURE TROVE**, (from the French *trouver*, to find,) is where any money or coin, gold, silver, plate, or bullion, is found hidden in the earth, or other private place, the owner thereof being unknown; in which case, the treasure belongs to the king: but if he that hid it be known, or afterwards found out, the owner and not the king is intitled to it.  
1 *Black.* 295.

Also if it be found in the sea, or *upon* the earth, it doth not belong to the king, but to the finder, if no owner appears. *Id.*

So that it seems it is the *hiding*, not the *abandoning* of it, that gives the king a property. And the difference arises from the different intentions which the law implies in the owner. A man that hides his treasure in a secret place, doth not mean to relinquish his property, but reserves a right of claiming it again when he sees occasion; and if he dies, and the secret also dies with him, the law gives it to the king. But a man that scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it: and therefore it belongs, as in a state of nature, to the first occupant or finder; unless the owner appears and asserts his right, which then proves that the loss was by accident, and not with an intent to renounce his property. *Id.*

Larceny cannot be committed of such things whereof no man hath any determinate property; though the things themselves are capable of property; as of treasure trove, or wreck till seized; though he that has them in point of franchise, may have a special action against him that takes them.  
1 *Hale's Hist.* 510.

And on a criminal prosecution, the punishment for concealment of treasure trove is by fine and imprisonment.  
3 *Inst.* 133.

Therefore when a man has found any treasure, he ought to make it known to the coroner; who has jurisdiction given to inquire thereof by the statute of 14 *Ed.* 1. called the statute *de officio coronatoris*.

**TREBUCKET**, (a *bucket* at the end of a tree or piece of timber,) signifieth a stool that falleth down into a pit of water, for the punishment of the party placed therein, being the same as the *cucking stool*.

**TRESAYLE**, Fr. the grandfather's father; it is a writ that lies, where the grandfather's grandfather was seized on the day on which he died, of lands or tenements in fee simple; and after his death a stranger entereth the same day upon him and keeps out the heir.

**TRESPASS**, in its largest sense, signifies any transgression or offence against a man's person or property; but in its usual and more restrained sense, it signifies properly, an entry on another man's ground without a lawful authority, and doing some damage, however inconsiderable, to his real property. 3 *Black.* 208.

One must have a property (either absolute or temporary) in the soil, and actual possession by entry, to be able to maintain an action of trespass; or at least, it is requisite that the party have a lease and possession of the vesture and herbage of the land. *Id.* 210.

A man is answerable for not only his own trespass, but that of his cattle also; for, if by his negligent keeping, they stray upon the land of another, (and much more if he permits, or drives them on,) and they there tread down his neighbour's herbage, and spoil his corn or his trees, this is a trespass for which the owner must answer in damages. *Id.* 211.

And the law gives the party injured a double remedy in this case; by permitting him to distrain the cattle thus doing damage, till the owner shall make him satisfaction; or else by leaving him to the common remedy by action. *Id.*

And the action that lies in either of these cases, of trespass committed upon another's land, either by a man himself, or his cattle, is the action of *trespass with force and arms*; for the law always couples the idea of force with that of intrusion

intrusion upon the property of another. And herein, if any unwarrantable act of the defendant or his beasts in coming upon the land be proved, it is an act of trespass, for which the plaintiff must recover some damages; such, however, as the jury shall think proper to assess. *Id.*

In some cases, trespass is justifiable; or rather, entry on another's land or house, shall not in those cases be accounted trespass; as if a man comes there to demand or pay money there payable, or to execute, in a legal manner, the process of the law. Also, a man may justify entering into an inn or alehouse without the leave of the owner first specially asked; because, when a man professes the keeping of such inn or alehouse, he thereby gives a general licence to any person to enter his doors. So a landlord may justify entering to distrain for rent; a commoner to tend his cattle commoning on another's land; and a reversioner, to see if any waste be committed on the estate; from the apparent necessity of the thing. In like manner, the common law warrants the hunting of ravenous beasts of prey, as badgers and foxes, in another's land; because the destroying them is profitable to the public; but not to break the soil in order to dig them out. *Id.* 212.

Also a man may justify a trespass, where it was merely accidental and involuntary; as where sheep were trespassing in the defendant's ground, he chased them out with his dog; the dog pursued them into his next neighbour's adjoining ground, though as soon as they were out of his own ground, he called back his dog and chid him. The owner of the sheep brought an action of trespass, for chasing his sheep. But the court were of opinion, that an action did not lie in this case, as it appeared to be an involuntary trespass; whereas a trespass that may not be justified ought to be done voluntarily. *Bur. Mansf.* 2094.

A man may also justify in an action of trespass, on account of the freehold and *right* of entry being in himself; and this defence brings the title of the estate in question. This is therefore one of the ways devised, since the disuse of real actions, to try the property of estates; though it is not so usual as that by *ejection*; because *ejection* being now a mixed action, not only gives damages for the ejection, but also possession of the land; whereas in *trespass*, which is merely a personal suit, the right can be only ascertained, but no possession delivered; nothing being recovered but damages for the wrong committed. *Id.* 214.



If a man has a way over my lands for his beasts to pass; if the beasts snatch the grass by morsels in passing, it is justifiable; it being against his will, as must be intended. 2 *Roll's Abr.* 567.

If a servant, without his master's knowledge, puts beasts in another man's land, the servant is the trespasser, and not the master; because the servant doing it without the master's assent, gains as it were a special property for the time; and so to this purpose they are his beasts. 2 *Roll's Abr.* 553.

But it seems, if a man's wife put beasts into another's land, the husband is the trespasser; because the wife cannot gain a property distinct from her husband. 2 *Roll's Abr.* 55.

If several come, and one does the trespass, and the others do nothing but come in aid, they are all principal trespassers; for in trespass there is no accessory. *Br. Tresp.*

If in cutting my thorns, some of them fall into another man's land, when I did all I could to prevent it, I may enter upon that land to take them. *Id.*

So if trees are blown down by the wind, it is no trespass to enter the land into which they are blown down, to take them. *Latch.* 13.

So if trees grow in my hedge, hanging over another man's land, and the fruit of them falls into the other's land, I may justify my entry to gather up the fruit, if I make no longer stay there than is convenient, nor break his hedge. *Id.* 120.

If a man seised in fee of lands, hath certain loads of timber upon the land, and dies, his executor may justify the entry into the land to take the timber. 2 *Roll's Abr.* 564.

So if the executor sell it to another, the vendee may justify the entry into the land to take it. *Id.*

If the sheriff upon an execution sells corn growing, the vendee, when the corn is ripe, may enter and reap, and carry it away. 1 *Ventr.* 222.

In order to prevent trifling and vexatious actions of trespass, it is enacted by the 43 *Eliz. c. 6.* and 8 & 9 *W. c. 11.* that where the jury who try an action of trespass give less damages than 40s., the plaintiff shall be allowed no more costs than damages, unless the judge shall certify on the back of the record that the freehold or title of the land came chiefly in question. But if it shall appear, that the

trespass was wilful and malicious, the plaintiff shall have his full costs. Note, every trespass is *wilful*, where the defendant hath notice, and is especially forewarned not to come on the land; and every trespass is *malicious*, where the intent of the defendant plainly appears to be to harass and distress the plaintiff. 3 *Black.* 214.

TRIAL, is the examination of the matter of fact in issue; of which there are many different species, according to the difference of the subject or thing to be tried. 3 *Black.* 330.

TRINODA NECESSITAS, signifies a threefold necessary tax, to which all lands in the Saxon times were liable; that is, for repairing of bridges, the maintaining of castles or garrisons, and for expeditions to repel invasions. And in the king's grants of privileges and immunities, these three things were commonly excepted.

TRITHING. When the kingdom was first divided into hundreds and tithings, an officer was set at the head of each tithing, commonly called the *tithingman*, or sometimes the *headborough*; except that in some places, one officer only presided over three tithings; and these joined together constituted the *trithinga*; and the said officer was denominated the *thirdborough*, or *trithingman*.

TRONAGE, *tronagium*, is a customary duty or toll for weighing of wool. *Trone* is a beam to weigh with; and *tronage* was used for the weighing wool in a staple or public mart, by a common trone or beam; which, for the tronage of wool in *London*, was fixed at *Leaden-hall*. The mayor and commonalty of *London* are ordained keepers of the beams and weights for weighing merchants commodities, with power to assign clerks and other officers of the great beam and balance; and no stranger shall buy any goods in *London*, before they are weighed at the king's beam, on pain of forfeiture. *Chart. Hen.* 8.

TROVER, is a French word, and signifies to *find*. Action of *trover* and *conversion* was in its original an action of trespass upon the case, for recovering of damages against such person as had *found* another's goods, and refused to deliver them on demand, but *converted* them to his own use; from

from which finding and converting it is called an action of *trover and conversion*. 3 *Black.* 151.

By a fiction of law, actions of trover are now permitted to be brought against any person who hath got into his possession by any means whatsoever the goods of another, and sold them or used them without the consent of the owner, or refused to deliver them when demanded. *Id.* 152.

The injury lies in the conversion; for any man may take the goods of another into possession, if he finds them; but no finder is allowed to acquire a property therein, unless the owner is unknown. And therefore he must not convert them to his own use, which the law presumes him to do, if he refuses to restore them to the owner; for which reason, such refusal alone is, *prima facie*, sufficient evidence of the conversion. *Id.*

The fact of finding, or trover, is therefore now totally immaterial, for the plaintiff needs only to suggest, as words of form, that he lost such goods, and that the defendant found them; and if he proves that the goods are his (the plaintiff's) property, and that the defendant had them in his possession, it is sufficient. But a *conversion* must be fully proved; and then in this action the plaintiff shall recover damages, equal to the value of the thing converted, but not the thing itself; which nothing will recover but an action of detinue or replevin. *Id.*

In this action, the plaintiff must first prove a right or property in the goods, or at least a lawful possession or special property for some time, as in the case of a carrier. Secondly, he must prove a possession in the defendant. And thirdly, he must prove a demand, and refusal to deliver them, which refusal is allowed to be good evidence to the jury that he converted the same, unless the contrary be made appear. *Wood. b. 4. c. 4.*

In trover for a bond, the plaintiff need not shew the date; for the bond being lost or converted, he may not know the date; and if he should set out the date, and mistake it, he would fail in his action. *Cro. Car.* 262.

Trover for a bank bill will lie against a person who found it, because the finding gave him no title, though payment to him would have indemnified the bank; but if the finder hath assigned it over to another for a valuable consideration, trover will not lie against the assignee, by reason of the course of trade. 1 *Salk.* 126.

Trover lies for a wager against him who holds the stakes, 1 *Czm. Dig.* 237.

A man

A man put out cattle to pasture at so much a week, and then sold them to the plaintiff, who demanded the cattle, but the defendant refused to deliver them to the plaintiff, unless he would pay for the pasturage of them. On trover brought for the cattle, it was adjudged, that this denial upon demand was a conversion, and that the defendant might not detain the cattle against him who bought them, until the pasturage was paid, but can only bring his action against him who put them to pasturage; and that it is not like to the case of an innkeeper or taylor; they may retain the horse or garment delivered to them until they be satisfied; but not, where one receives cattle to pasturage, unless there be such an agreement between the parties. *Cro. Car.* 271.

**TROY WEIGHT**, is a weight of twelve ounces to the pound; having its name from *Troyes*, a city in *Champain*; from whence it first came to be used here.

#### TRUSTS:

1. TRUSTS are of the same nature that uses were at the common law. It is only a new name given to an use. And conveyances by way of trust were invented to evade the statute of uses. 21 *Vin.* 493. 2 *Black.* 336.

2. If a person, in whom a trust is reposed, breaks or doth not perform the same, the remedy is by bill in equity, the common law generally taking no notice of trusts. 2 *Atk.* 612.

And, now, trusts are governed by very nearly the same rules in a court of equity, as would govern the same in a court of law, if no trustee were interposed; and by a regular positive system established in the courts of equity, the doctrine of trusts is now reduced to as great certainty as that of legal estates in the courts of common law. 3 *Black.* 439.

3. By the statute of frauds and perjuries, 29 C. 2. c. 3.  
 " All declarations of trusts of lands shall be in writing, except where the trust shall arise by construction of law, or  
 " be transferred or extinguished by operation of law. And  
 " the sheriff may have execution of the trust estate, in like  
 " manner as if the *cestuy que trust* (that is, he for whose use  
 " the trust is created) had himself been seised."

And soasmuch as the statute doth not extend to trusts by construction or operation of law, therefore if a man buys land in another person's name, and pays the money for the land, this will be a trust for him that paid the money,



though there be no deed declaring the trust, for the trust in this case arises from construction of law. 2 *Ventr.* 361. 2 *Vern.* 294.

4. In a devise to trustees, it is not necessary the word *heirs* should be inserted to carry the fee at law; for if the purposes of the trust cannot be satisfied without having a fee, the court will so construe it. 1 *Vez.* 491.

5. Where executors are made trustees, they can take nothing for their own benefit, unless it be particularly given to them; for there is a difference between a trustee and an executor. A trustee hath a mere legal right only, but an executor has more; for if there is a surplus, he may have a beneficial interest. 2 *Atk.* 643. 3 *Atk.* 96.

But if there be a direction in the will, that the trustees shall be paid for their *trouble*, this shall be considered as a legacy to the trustees: and herein there can be no inconvenience; because it can carry it no farther than the particular words of the will do direct. 1 *Vez.* 115.

Though there are no negative words in a deed, that the trustees shall not be liable for the acts of one another, yet the court will not make them liable for more than each hath received. 3 *Atk.* 584.

And although they all join in a receipt for money, yet the court will make that trustee liable only who received it; for they are all obliged to join in the receipt: but otherwise it is as to executors, for there is no necessity for their joining, but they may act severally if they will. 3 *Atk.* 584.

But if the trustees will bind themselves to be liable for the acts of each other, the court will not relieve them. *Id.*

6. If a trustee compounds a debt with consent of *cestuy que trust*, this is no breach of trust. 21 *Vin.* 525. *Cha. Ca. Finch.* 58.

Therefore where a trustee errs in the management of the trust, yet if he goes out of the trust with the approbation of the *cestuy que trust*, it must be first made good out of the estate of the person who consented to it. 3 *Atk.* 444.

7. In equity, trusts are so regarded that no act of a trustee will prejudice the *cestuy que trust*; for though a purchaser for valuable consideration, without notice, shall not have his title any way impeached, yet the trustee must make good the trust: but if he purchases with notice, then he is the trustee himself, and shall be accountable. *Abr. Cas. Eq.* 384.

A trustee having broken his trust, by delivering up a bond, and taking security to save him harmless, was decreed to pay the

the money and interest ever since the bond was due. *Cha. Ca. Finch.* 241.

If one deviseth lands to trustees until his debts be paid, with remainder over, and the trustees misapply the profits, they shall hold the land only till they might have paid the debts, if the rents had been duly applied; and after that, the land shall be discharged, and the trustees only are answerable. *1 P. W.* 519.

In the case of *Whelpdale* and *Cookson*, *E.* 1747. on a devise of lands in trust for payment of debts, the trustee himself purchased part. Lord *Hardwicke* said, he would not allow it to stand good, although another person, being the best bidder, bought it for him at a public sale; for he knew the dangerous consequence. Nor is it enough for the trustee to say, you cannot prove any fraud, as it is in his own power to conceal it. But if the majority of creditors agreed to allow it, his lordship said, he should not hesitate to make it a precedent. *1 Vez.* 9.

The trustees of an infant, having saved money out of the estate, purchased lands with it, which lay near to the infant's estate, with the consent of his grandmother, declaring the trust for the benefit of the infant, if he, when of age, should agree to it. The infant died within age. It was decreed that the trustees should account to the executors of the infant for the money, but the profits of the land should be set against the interest. *1 Vern.* 435.

8. If a trustee lets out money to supposed able men, though they fail, he shall not be charged for more than he received. *12 Mod.* 509.

9. A breach of trust is considered but as a simple contract debt, and can only fall upon the personal estate of the trustee; and the particular circumstances of a case ought not to vary the rule. *2 Atk.* 119.

10. A *fine* with proclamation and non-claim will bar a trust. *1 Cha. Ca.* 268.

11. There shall be a tenant by *curtesy* of a trust estate; but of such an estate a widow shall not have *dower*. *1 P. W.* 109. *Cas. Talb.* 139.

12. A trust is not within the *statute of limitations*. *2 Atk.* 612.

TUMBREL, is an engine of punishment for correction, chiefly of scolding women. Lord *Coke* says, it properly signifies a dung cart. *Brañon* writes it *tymberella*. In *Domesday*,

day, it is called *cathedra stercoris*. It was in use in the Saxon times, by whom it was described to be *cathedra in qua rixose mulieres sedentes aquis demergebantur*; and seems to be no other than what is now called the *ducking stool*. Perhaps it might receive the appellation of *tymborella*, and by corruption *tumbrel*, as also the name of *trebucket*, (as it was sometimes called,) from the stool or bucket being fixed at the end of a *tree* or piece of *timber*, whereby to let down the seat into the water.

It was anciently also a punishment inflicted upon brewers, bakers, and others, transgressing the laws; who were thereupon in such a stool immersed in *stercore*; that is in stinking water. By the 51 *Hen. 3. st. 6.* intitled, the Statute of the Pillory and Tumbrel, a baker or brewer, grievously offending against the assize of bread or ale, shall suffer bodily punishment; that is, to wit, a baker to the pillory, and a brewer to the tumbrel, or other castigation (*pistor patiatur collistrigium, bra-ciatrix trebucketum vel castigacionem*).

Every lord of a leet or market ought to have a pillory and tumbrel. 3 *Inst.* 219.

TURN. See TOURN.

TURNPIKES, in aid of the statute duty, have of late years been introduced in most places; and for the security thereof, it is enacted by the 13 *G. 3. c. 84.* that if any person shall pull down, or otherwise destroy, any turnpike gate, post, chain, bar, or other fence, or any house erected for the use of such gate, he shall be guilty of felony, and transported for seven years.

## V A C

VACATION, in the courts of law, is all the time between the end of one term, and the beginning of another. So there is the vacation of an office, the vacation of a benefice, and the like.

VACCARY, a place to keep cows in.

**VADIARE DUELLUM**, to wage combat, is, where two contending parties, on a challenge, do give and take a mutual pledge of fighting. *Cowel.*

**VADIUM**, (*vas, vadis,*) a pledge or surety. So *vadium ponere* is to give security, bail, or pledges, for the appearance of a defendant in a court of justice.

**VADIUM MORTUUM**, a *mortgage* or dead pledge; which is, where a man borrows money of another, and grants him an estate in fee, on condition that if the money is not repaid, the estate so put in pledge shall continue to the lender as dead and gone from the mortgagor. 2 *Black.* 157.

**VADIUM VIVUM**, a living pledge, is, where a man borrows of another a sum of money, and grants him an estate, to hold until the rents and profits shall repay the sum borrowed. 2 *Black.* 157.

**VAGRANTS**, by 17 G. 2. c. 5. are described to be of three kinds:

1. *Idle and disorderly persons*: being (1.) such as threaten to run away and leave their wives and children to the parish. Or, (2.) who having been removed by order of two justices, return without a certificate. Or, (3.) who not having wherewith to maintain themselves, refuse to work for the usual and common wages. Or, (4.) who go about from door to door, and beg in the parish where they dwell. All these may be punished by one month's imprisonment in the house of correction.

2. *Rogues and vagabonds*; who are, (1.) persons going about begging, under pretence of loss by fire or other casualty. (2.) Persons going about as collectors for prisons, gaols, or hospitals. (3.) Fencers. (4.) Bearwards. (5.) Common players of interludes, not being licensed thereto. (6.) Minstrels. (7.) Jugglers. (8.) Gypsies, or persons wandering in the habit or form of Egyptians. (9.) Persons pretending to tell fortunes. Or, (10.) using any subtil craft to impose on his majesty's subjects. Or, (11.) playing or betting at any unlawful games. (12.) Persons running away and leaving their wives or children to the parish. (13.) Petty chapmen and pedlars unlicensed. (14.) Persons wandering abroad, and lodging in alehouses, barns, outhouses, or in the open air, and not giving a good account of themselves.



(15.) Persons wandering and begging, pretending to be soldiers or mariners. (16.) Pretending to go to work in harvest, without a certificate from the minister and churchwardens from whence they came. (17.) All other persons wandering abroad and begging. These may be punished by whipping, and imprisonment in the house of correction not exceeding six months.

3. *Incorrigible rogues*; who are, (1.) persons going about and collecting ends of yarn, thrums, or other refuse of cloth, in prejudice of the woollen manufacture. (2.) Persons apprehended as rogues and vagabonds, and escaping, or refusing to be examined, or knowingly giving a false account of themselves. (3.) Rogues or vagabonds escaping out of the house of correction. (4.) All persons who having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences. All these may be punished with whipping and imprisonment in the house of correction, not exceeding two years; and if they shall escape, or offend again in like manner, they shall be guilty of felony, and transported for seven years.

And if any person shall suffer any rogue, vagabond, or incorrigible rogue, to lodge in his house, outhouse, or other building, and shall not apprehend him and carry him before a justice, or give notice to the constable so to do, he shall forfeit not exceeding 40s. nor less than 10s.; and if any charge shall be brought on the parish by means of such offence, the same shall be answered to the parish by such offender.

**VALET**, *vadelet*, was anciently a name specially denoting young gentlemen in the service of a person of quality, but afterwards attributed to those of lower rank.

**VALUABLE CONSIDERATION**, is an equivalent given for a thing purchased. There is a difference between a *good* and a *valuable* consideration. A *good* consideration, is such as that of blood, or of natural love and affection, when a man grants an estate to a near relation; but deeds or grants, upon good consideration only, are considered in law as merely voluntary, and are frequently set aside in favour of creditors and *bona fide* purchasers. 2 *Black.* 297.

**VARIANCE**, signifies any alteration of a thing formerly laid in a plea, or where the declaration in a cause differs from

from the writ, or from the deed upon which it is grounded. If there is a variance between the declaration and the writ, it is error; and the writ shall abate. And if there appear to be a material variance between the matter pleaded, and the manner of pleading it, this is not a good plea; for the manner and matter of pleading ought to agree in substance, otherwise there will be no certainty in it. 2 *Lill. Abr.* 629. But when the pleading is good in substance, a small variation shall not hurt. 3 *Mod.* 227.

**VASSAL**, originally signified a tenant or holder of the lands generally; but in after-times, it was brought to signify a slave or bondman: so *vassalage* (*vasceleria*) signifies the state of a vassal, or servitude and dependency on a superior lord. 2 *Black.* 53.

**VAVASOR**, *valvasor*, was a title next in dignity to a baron; but vavassors are now quite out of use, insomuch, that antiquarians are not agreed even upon their original and ancient office.

**VELLUM AND PARCHMENT.** By the 24 *G. 3. c. 41.* every maker of vellum or parchment, shall take out a licence annually from the officers of excise.

**VENIRE**, (so called from those words in the writ, *venire facias*,) is the common process on an indictment or presentment for any misdemeanor under the degree of treason, felony, or maim; being in the nature of a *summons* to cause the party to appear. And if by the return to such *venire* it appears that the party hath lands in the county, whereby he may be distrained, then a *distrains infinite* shall be issued from time to time till he appears. But if the sheriff returns that he hath no lands in his bailiwick, then (upon his non-appearance) a writ of *capias* shall issue to take his body. 4 *Black.* 313.

Also when a cause is brought to issue, a writ of *venire* is directed to the sheriff, to summon a jury to appear, at the time and place appointed, to try the cause.

**VENTRE INSPICIENDO**, is a writ to search a woman that saith she is with child, and thereby withholds lands from the next heir. As if a man, having lands in fee simple, dies, and his widow soon after marries again, and says, she is with

child by her former husband ; in this case, this writ *de ventre inspiciendo* lies for the heir against her. By which writ the sheriff is commanded, that, in presence of twelve men, and as many women, he cause examination to be made, whether the woman is with child or not ; and if with child, then about what time it will be born ; and that he certify the same to the justices of assize, or at *Westminster*, under his seal, and under the seals of two of the men present. *Cro. Eliz.* 506.

VENUE, (*visne, vicinetum,*) the neighbourhood, from whence juries are to be summoned for trial of causes. In local actions, as of trespass and ejectment, the venue is to be from the neighbourhood of the place where the lands in question lie ; and in all real actions, the venue must be laid in the county where the thing is for which the action is brought. But in transitory actions, for injuries that may have happened any where, as debt, detinue, slander, or the like, the plaintiff may declare in what county he pleases ; and then the trial must be in that county in which the declaration is laid. Though if the defendant will make affidavit, that the cause of action, if any, arose not in that, but in another county, the court will direct a *change of the venue*, and oblige the plaintiff to declare in the proper county. And the court will sometimes remove the venue from the proper jurisdiction, (especially of the narrow and limited kind,) upon a suggestion, duly supported, that a fair and impartial trial cannot be had therein. 3 *Black.* 294.

VERDERER, *viridarius*, is an officer in the king's forest, whose office is properly to look after the *vert*, for food and shelter of the deer. He is also sworn to keep the assises of the forest, and receive and inroll the attachments and presentments of trespasses within the forest, and certify them to the swainmote or justice-seat.

VERDICT. See JURORS.

VERT, Fr. *verd, viridis*, in the forest laws, signifies every thing that beareth a green leaf within the forest, that may be covert for the deer. Vert also sometimes is taken for that power which a man hath by the king's grant to cut green wood in the forest.

VESTED

**VESTED legacy.** If a legacy be given to one, *to be paid* at a future day, this is a vested legacy, an interest which commences *in presenti*, although it be *solvendum in futuro*: and if the legatee dies before the day of payment, his representatives shall receive it at the same time that it would have become payable in case the legatee had lived. But if the legacy be given to one *when* he attains, or *if* he attains such an age, and he dies before that time, in such case the legacy is lapsed. 2 Black. 513.

A *vested remainder*, is where the estate is invariably fixed, to remain to a determinate person, after the particular estate is spent. As if one be tenant for twenty years, remainder to another in fee; here the remainder is fixed, which nothing can defeat or set aside. But where an estate in remainder is limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event, this is a *contingent* remainder, so as the particular estate may chance to be determined, and the remainder never take effect. 2 Black. 168.

**VESTRY**, is an assembly of the whole parish met together in some convenient place, for the dispatch of the affairs and business of the parish; and this meeting being commonly held in the vestry adjoining to, or belonging to the church, it thence takes the name of vestry, as the place itself doth, from the priest's vestments, which are usually deposited and kept there.

On the *Sunday* before a vestry is to meet, public notice ought to be given, either in the church, or after divine service is ended, or else at the church door as the parishioners come out; both of the calling of the said meeting, and also the time and place of the assembling of it: and it is reasonable then also to declare for what business the said meeting is to be held, that none may be surprized, but that all may have full time before to consider of what is to be proposed at the said meeting. *Watf. c. 39.*

In every such meeting the minister usually presides, for regulating and directing the business.

Out-dwellers, occupying land in the parish, have a vote in the vestry as well as the inhabitants. *Johns. 19.*

When they are met, the major part present will bind the whole parish. *Watf. c. 39.*

The right of adjourning is not in the minister or any other person as chairman, nor in the churchwardens, but in the



whole assembly, who are all upon an equal footing; and the same must be decided, as other matters there, by a majority of votes. *Str.* 1045.

It is convenient that every vestry act be entered in the parish book of accounts; and that every man's hand consenting to it, be set thereto.

The *vestry clerk* is chosen by the vestry; whose business it is, to attend at all parish meetings, and to draw up and copy all orders and other acts of the vestry, and to give out copies thereof when necessary; and therefore he has the custody of all books and papers relating thereto.

By custom there may be a *select vestry*, or a certain number of persons chosen to have the government of the parish, to make rates, and take the churchwardens accounts, and the like. In the city of *London* in particular, there are select vestries in most of the parishes.

**VETITUM NAMIUM**, (*vetitum*, forbidden, and *namium*, from *naam*, a distress,) signifies properly when the bailiff of the lord distraineth beasts or goods, and the lord *forbiddeth* his bailiff to deliver them when the sheriff comes to replevy them, and to that end to drive them to places unknown, or to take such a course as they should not be replevied: but it is also called *vetitum namium*, a forbidden distress, when without any words they are eloigned, or so handled by a forbidden course, as they cannot be replevied, for then they are forbidden in law to be replevied. *2 Inst.* 140.

**VICAR**, *vicarius*, is one that supplies the place of another. On the appropriation of a church to any of the religious houses, the monks generally supplied the cure by one of their own fraternity, and received the revenues of the church to their own use. Afterwards it became established in most of the appropriated churches, that they should be supplied by a secular clerk, and not by a member of their own house; from whence he received the name of *vicarius*, as it were *vicem gerens*, supplying the place of the religious society. And for the maintenance of this vicar, was set apart a certain portion of the tithes, commonly about a third part of the whole, which are now what are called the vicarial tithes; the rest being reserved to the use of those houses, which for the like reason are denominated the rectorial tithes. And after these houses were dissolved, and the king was become possessed

seised of that share which had belonged to the religious houses, those possessions were granted by the crown to divers persons, chiefly among the laity, who are therefore now styled *lay impropriators*, the whole rectory belonging to them; that is, the whole tithes and other revenues of the church, except what the vicar can claim by endowment or prescription.

**VICAR GENERAL**, is an officer under the bishop, having cognizance of spiritual matters, as correction of manners, and the like; as the *official principal* hath jurisdiction of temporal matters, as of wills and administrations; and both of these are commonly united under the general name of *chancellor*.

**VICINAGE**, *common of*: this is, where the inhabitants of two townships, which lie contiguous, have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields without any molestation from either. This is indeed only a permissive right, intended to excuse what in strictness is a trespass in both, and to prevent a multiplicity of suits; and therefore either township may inclose and bar out the other, though they have intercommoned time out of mind. Neither hath any person of one town a right to put his beasts originally into the other's common; but if they escape and stray there of themselves, the law winks at the trespass. 2 *Black.* 34.

**VICONTIEL**, belonging to the sheriff; as *vicontiel writs* are such as are triable in the county or sheriff's court. So *vicontiel rents* are such as were received by the sheriff, and for which he accounted in the exchequer.

**VIDAME**, *vice-dominus*, was an ancient officer, in degree next unto a baron.

**VIEW**, *jury of*. In any action brought in the courts at *Westminster*, where it shall appear to the court, that it is necessary for the jurors to have a view of the place in question, they may order special writs of *disfringas*, or *habeas corpora*, to issue; by which the sheriff shall be commanded to have six or more of the jurors in the panel, who shall be consented to by the parties, or, if they cannot agree, by the proper officer

or judges of the court, at the place in question, some convenient time before the trial; who shall have the matters in question shewn to them by two persons in the said writs named. And upon the trial, those who have had the view shall be first sworn, or such of them as shall appear, before any drawing, and others shall be drawn to make up the number. 4 *An. c. 16.* 3 *G. 2. c. 25.*

Upon the view, the thing in question shall only be shewn to the jury, but no evidence shall be given on either side. 2 *Lill. Abr. 656.*

#### VIEW OF FRANKPLEDGE. See FRANKPLEDGE.

VIGIL, *vigilia*, the eve or day next before any solemn feast; because then christians were wont to *watch*, fast, and pray in their churches. *Ken. Par. Ant. 609.*

VI LAICA REMOVENDA, is a writ that lies where a clerk intrudes into an ecclesiastical benefice, and holds the same with strong hand and great power of the laity. By this writ the sheriff is commanded to remove the force, and to arrest and imprison the persons that make resistance, so as to have their bodies before the king at a certain day, to answer the contempt. The writ is returnable into the king's bench, where the offenders shall be fined and punished for the force, and from thence restitution shall be awarded to the party intruded upon. *Watf. c. 30.*

VILL, *villa*, or *vicus*, was anciently a precinct consisting of ten families; upon which account they are sometimes called *tithings*.

VILLEINS, *villani*, were so called, because they lived in *villages*, and were employed in rustic work; whilst the free tenants, who held by knights service, attended their lord to the wars. 1 *Inst. 116.*

Villeins were either villeins *regardant*; that is, annexed to the manor or land; or else they were *in gross*, or at large; that is, annexed to the person of the lord, and transferrable by deed from one owner to another. They could not leave their lord without his permission; but if they ran away, or were purloined from him, might be claimed and recovered by action, like beasts or other chattels. They held indeed  
small

small portions of land, by way of sustaining themselves and families; but it was at the mere will of the lord, who might dispossess them whenever he pleased. 2 *Black.* 93.

A villein could acquire no property either in lands or goods; but if he purchased either, the lord might enter upon him, and seize them to his own use. *Id.*

The children of villeins were in the same state of bondage with their parents, whence they were called *nativi*, which gave rise to the female appellation of a villein, who was called a *neife*. In case of a marriage between a freeman and a neife, or a villein and a free woman, the issue followed the condition of the father, being free if he was free, and villein if he was villein. *Id.* 94.

The lord might not kill or maim his villein, but he might beat him with impunity. *Id.*

But partly by manumission or enfranchisement, and partly by the indulgence of the lords in permitting their villeins and their children to enjoy their possessions without interruption in a regular course of descent, the common law, of which custom is the life, gave them title to prescribe against their lords; for though, in general, they are still said to hold their estates at the will of the lord, yet it is such a will as is agreeable to the custom of the manor; and from hence have sprung up many of the copyhold tenures at this day. *Id.* 95.

**VILLENIOUS JUDGMENT**, is that which casts the reproach of villany upon him against whom it is given; and it was an ancient judgment given by the common law in attain, or in cases of conspiracy, whereby the offender lost his *liberam legem*, and became infamous, disabled to be a juror or witness, forfeited his goods and chattels, and his lands during life, and to have those lands wasted, his houses rased, his trees rooted up, and his body committed to prison. But this judgment seems to be now obsolete, there being no instance of it since the reign of *Edward* the third. *Bur. Mansf.* 996. 1027.

**VINEGAR**. By the 24 *G. 3. c. 41.* every maker of vinegar for sale, shall take out a licence annually.

And by the 27 *G. 3. c. 13.* a duty is imposed on all vinegar imported; and also on all vinegar made in *Great Britain*, which is to be under the management of the officers of excise.

VIRGA,



**VIRGA**, a rod or white staff, such as sheriffs, bailiffs, and others, carry as a badge or ensign of their office. *Corwell.*

**VIRGATE** of land, is said to consist of twenty-four acres; four virgates make a hide, and five hides a knight's fee. *Ken. Gloss.*

**VIRGE**, tenant by. A species of copyholders, who are said to hold by the virge or rod.

**VISCOUNT**, *vici-comes*, is a title of nobility, above a baron, and next below an earl. He was originally the earl's deputy in the government of the shire. But in after-times, it became a mere title of honour, without any shadow of office belonging to it. The first instance whereof was, in the 18 *Hen. 6.* when *John Beaumont* was created a peer by the name of viscount *Beaumont*. 1 *Black.* 398.

**VISITOR**, is an inspector of the government of corporations or bodies politic, ecclesiastical or civil. With respect to all ecclesiastical corporations, the ordinary is their visitor, so constituted by the canon law, and from thence derived to us. The pope formerly, and now the king, as supreme ordinary, is the visitor of the archbishop; the archbishop, of the bishops; and the bishops, in their several dioceses, are in ecclesiastical matters the visitors of all deans and chapters, parsons and vicars, and all other spiritual corporations. With respect to all lay corporations, the founder, his heirs or assigns, are the visitors, whether the foundation be civil or eleemosynary. Eleemosynary corporations are chiefly hospitals, and colleges in the universities; which colleges are lay corporations, although the particular members thereof may be clergymen. 1 *Black.* 482.

**VISNE**, *vicinitum*, a neighbouring place. See **VENU**.

**VIVARY**, a place by land or water, where *living* creatures were kept; and, in law, is most commonly used for a park, warren, or fishery.

**VIVUM VADIUM**, a living pledge, (in opposition to *mort-gage*, or dead pledge,) is when a man borrows a sum of money, and grants an estate to the lender, to hold till the  
rents

rents and profits shall repay the sum borrowed. In which case, the land or pledge is said to be *living*, and survives to the borrower on discharge of the debt. 2 *Black*, 157.

UMPIRE, is one chosen to decide between the parties; which is usually when the parties in difference submit the matters in dispute to the arbitration of certain persons, and if they cannot agree, or are not ready to deliver their award before such a time, then to the judgment of another as umpire (*imperator*) between them. See ARBITRATION.

UNCORE PRIST, (Fr. *yet is ready*,) is where, after tender and refusal of a debt, and an action brought for the debt, the debtor acknowledges the debt, and pleads the tender; adding, that he has been always ready, *tout temps prist*, and still is ready, *uncore prist*, to discharge it: for a tender by the debtor, and refusal by the creditor, will in all cases discharge the costs, but not the debt itself; though in some particular cases the creditor will totally lose his money. 3 *Black*. 303.

UNCOUTH, Sax. unknown.

UNION of *England* and *Scotland*, was made by the parliaments of both kingdoms in the year 1707; comprized in a number of articles; the principal of which are, that the united kingdom shall be represented by one parliament; that the laws relating to trade, customs, and the excise, shall be the same in both kingdoms; that when *England* raises 2,000,000*l.* by a land tax, *Scotland* shall raise 48,000*l.*; that sixteen peers shall be chosen to represent the peerage of *Scotland* in parliament, and forty-five members to sit in the house of commons; that all peers of *Scotland* shall be peers of *Great Britain*, and rank next after those of the same degree at the time of the union, and shall have all privileges of peers, except sitting in the house of lords, and voting on the trial of a peer.

*Union of two churches.* By statute 37 *H. 8. c. 21.* an union or consolidation of two churches in one, or of a church and chapel in one, and one of them not being above 6*l.* a year in the king's books, and not distant from the other above one mile, may be made by the assent of the respective ordinaries, patrons, and incumbents. And further provisions

sions are made concerning the same, by the subsequent statutes of 17 C. 2. c. 3. and 4 W. c. 12.

UNIVERSITY. See COLLEGES.

UNLAWFUL ASSEMBLY, is where three or more persons assemble together, with intent mutually to assist each other in the execution of some enterprize of a private nature, with force or violence. If they move forward towards the execution thereof, it is then a *rout*; and if they execute it in deed, it is a *riot*. 1 *Haw.* 155.

VOIR DIRE, *veritatem dicere*, is where the party is examined upon oath, to make true answer to such questions as the court shall demand of him: so where it is prayed upon a trial at law, that a witness may be sworn whether he shall get or lose by the matter in controversy, this is called a *voir dire*; and if it appears that the witness is disinterested, his testimony is allowed, otherwise not. 3 *Black.* 332.

VOLUNTARY, as applied to a deed, is where any conveyance is made without a consideration, either of money, marriage, or other valuable thing; which kind of conveyances, in favour of creditors, and *bona fide* purchasers, are frequently set aside. 2 *Black.* 297.

A *voluntary oath*, is where a man takes an oath in an extrajudicial matter, of which the law takes no notice; for no oath incurs the punishment of perjury, unless it is taken in some court of justice having power to administer an oath, or before some magistrate or proper officer invested with a like authority. 4 *Black.* 137.

VOUCHER, (*vocatio*,) is a word of art made of the Latin, *voco*; and is, when the tenant in a *real* action calleth another into the court that is bound to him in warranty; that is, either to defend the right against the demandant, or to yield him other land in value; and extendeth to lands or tenements of an estate of freehold of inheritance, and not to any chattel real, personal, or mixed: for in those cases, the party, if he hath a warranty, shall not vouch, but have his action of covenant, if he hath a deed: or if it be by parol,

parol, then an action upon his case, or an action of deceit, as the case shall require. 1 *Inst.* 101.

It is generally used in suffering recoveries called a *single* voucher, where there is but only one voucher; and a *double* voucher, when the vouchee voucheth over; and so a treble voucher, or further, as occasion may be. 1 *Inst.* 102.

He that voucheth, is called the *voucher*; and he that is vouched, is called the *vouchee*.

USAGE, differs from *custom* and *prescription*: no man may claim a rent, common, or other inheritance, by usage, though he may by prescription. 6 *Co.* 65. See PRESCRIPTION.

USANCE, is a word among merchants in bills of exchange, and denotes a calendar month; as from *May* 20, to *June* 20: so double ufance is two such months.

USE, is a trust and confidence reposed in another who is tenant of the land, that he shall dispose of the land according to the intention of *cestuy que use*, or him to whose use it was granted, and suffer him to take the profits; as if a feoffment was made to *A.* and his heirs, to the use of (or in trust for) *B.* and his heirs; here, at the common law, *A.* the tenant had the legal property and possession of the land; but *B.* (the *cestuy que use*,) was in conscience and equity to have the profits and disposal of it. 2 *Black.* 328.

This notion was first introduced by the ecclesiastics, to evade the statutes of mortmain; by obtaining grants of lands, not to their religious houses directly, but to the *use* of the religious houses. *Id.*

But, however fraudulently introduced, this idea afterwards continued to be often innocently, and sometimes laudably, applied to a number of civil purposes, as it enabled the owner of lands to make various designations of the profits thereof, as prudence, or justice, or family convenience, might require. 2 *Black.* 328, 9.

But this opening the way to frauds, statutes were made from time to time to remedy the several inconveniencies; and finally, by the 27 *H.* 8. *c.* 10. which is commonly called the *statute of uses*, or the *statute for transferring uses into possession*, the *cestuy que use* is considered as the real owner of the estate; whereby it is enacted, that "when any person

"is seised of lands to the use of another, the person in-

"titled



“ titled to the use in fee simple, fee tail, for life, or years,  
 “ or otherwise, shall stand and be seised or possessed of the  
 “ land, in the like estate as he hath of the use, trust, or  
 “ confidence ;” and thereby the act makes *cestuy que use* complete owner both at law and in equity. 2 *Black.* 332.

And this introduced the present and most usual form of conveyance of a freehold by lease and release, in order to save the trouble of making livery of seisin upon the lands. The *lease* makes the lessor stand seised to the use of the lessee, and vests in the lessee the use of the term ; and then the statute immediately annexes the possession. And being thus in possession, he is capable of receiving a *release* of the freehold and reversion. 2 *Black.* 339.

And so far as the use now governs the possession, hence in conveyances, it is set down in the *habendum* to whose use the lands are conveyed ; as, to the only proper use and behoof of him the said *A. B.* (the purchaser) his heirs and assigns for ever.

But copyhold lands are not within this statute of uses ; because the transferring of the possession by the sole operation of the statute, without allowance of the lord and agreement of the tenant, would tend to the prejudice of both lord and tenant. *Coke's Copyb. f. 54.*

**USUFRUCTUARY**, is one that has the use, and reaps the profits of a thing.

**USURPATION**, is the using that which is another's ; an interruption or disturbing a man in his right and possession.

An usurpation of a *church benefice* is, when a stranger, that hath no right, presents a clerk, who is thereupon admitted and instituted. In which case, by the common law, the patron lost not only his turn of presenting for that time, but also the absolute and perpetual inheritance of the advowson, so that he could not present again upon the next avoidance, unless in the mean time he recovered his right by a real action, upon a writ of *right of advowson*. But by the 13 *Ed. 1. c. 5.* the patron shall not be driven to the difficulties of a real action upon a writ of *right*, but he shall recover the presentation upon a *possessory* action by *darrein presentment* or *quare impedit*, provided he brings such action within six months after the avoidance : but if he neglected to bring his action within the six months, he was driven about to his writ

of right as before. But now finally, by the 7 *An. c. 18.* no usurpation shall displace the estate or interest of the patron, or turn it to a mere right; but the true patron may present upon the next avoidance, as if no such usurpation had happened. 3 *Black.* 243.

There is also an usurpation of *franchises* and *liberties*; which is, when a subject unjustly uses any royal franchises or liberties, which is said to be an usurpation upon the king; who shall have a writ of *quo warranto* against the usurper.

**USURY**, properly consists in extorting an unreasonable rate for money, beyond what is allowed by statute.

By the 12 *An. c. 26.* no person shall, upon any contract, take, directly or indirectly, for loan of any money, wares, merchandize, or other commodities whatsoever, above the value of 5*l.* for the forbearance of 100*l.* for a year; and so in proportion: and all contracts to the contrary shall be void. And persons taking more, shall forfeit treble value of the money, or other things lent. And any scrivener, broker, or solicitor, who shall take for brokage, soliciting, or procuring the loan, above 5*s.* for the loan, or above 12*d.* (above stamp duties) for making or renewing the bond or bill, shall forfeit 20*l.* with costs, and be imprisoned half a year. Which said forfeiture shall be half to the king, and half to the prosecutor.

But if a contract, which carries interest, be made in a foreign country, our courts will direct the payment of interest according to the law of that country in which the contract was made. Thus *Irish*, *American*, *Turkish*, and *Indian* interest, have been allowed in our courts, to the amount of even twelve *per cent.* For the moderation or exorbitance of interest depends upon local circumstances; and the refusal to enforce such contracts would put a stop to all foreign trade. 2 *Black.* 463.

**UTLAGATUS**, a person outlawed. See **OUTLAW**.

## W A G

**WAGER OF LAW**, *vadiare legem*, is where an action of *debt* is brought against a man upon a simple contract between the parties, without deed or record; and the defendant swears in court, that he owes the plaintiff nothing in manner and form as he hath declared; and his compurgators swear

swear that they believe what he swears is true. And the reason of waging law is, because the defendant may pay the plaintiff his debt in private, or before witnesses which may be dead, and therefore the law allows him to wage his law in his discharge; and his oath shall be rather accepted to discharge himself, than the law will suffer him to be charged upon the bare allegation of the plaintiff. 2 *Inst.* 45.

It is called *wager* of law, because of ancient time he put in *gages*, pledges or sureties, to make his law at such a day. And it is called *making* of his law, because the law doth give such a special benefit to the defendant to bar the plaintiff for ever in that case. But he ought to bring with him eleven persons of his neighbours, that will avow upon their oath, that in their consciences he saith truth, 1 *Inst.* 295.

The manner of waging law is thus:—He that hath waged or given security to make his law, brings with him into court his eleven compurgators; and, standing towards the end of the bar, the secondary asks him, whether he will wage his law? If he answer that he will, the judges admonish him to be well advised, and tell him the danger of a false oath. If he still persists, the secondary says, and he that wageth his law repeats after him; *Hear this, ye justices, that I, A. B. do not owe to C. D. the sum of , nor any part thereof, in manner and form as the said C. D. hath declared against me; So help me God.* And thereupon his compurgators shall make their oaths in manner aforesaid. 3 *Black.* 343.

Wager of law lieth not where there is any specialty, as a bond or deed, to charge the defendant; but when the debt groweth by word only. A man outlawed, attainted for false verdict, or for conspiracy, or perjury, or otherwise become infamous, shall not be permitted to wage his law. So also where a contempt, trespass, deceit, or any injury with force is alleged against the defendant, he shall not be permitted; for it is impossible to presume he hath satisfied the plaintiff his demand in such cases, where the damages are uncertain, and left to be assessed by a jury. Likewise executors and administrators, when charged for the debt of the deceased, shall not be admitted to wage their law; for no man can swear of another man's contract, either that he never made such contract, or that he privately discharged it. *Id.* 345.

At length it being considered that this waging of law offered too great a temptation to perjury, by degrees new remedies were devised, and new forms of action introduced, wherein no defendant is at liberty to wage his law. So that now, instead of an action of *debt* upon a simple contract, an  
action

an action of *trespass upon the case* is brought for the breach of a promise or *assumpsit*, wherein, though the specific debt cannot be recovered, yet damages may, equivalent to the specific debt: and this being an action of trespass, no law can be waged therein. So instead of an action of *detinue* to recover the very thing detained, an action of *trespass upon the case in trover and conversion* is usually brought; wherein, though the specific thing cannot be had, yet the defendant shall pay damages for the conversion, equal to the value thereof; and for this trespass also no wager of law is allowed. In the place of actions of *account*, a bill in equity is usually filed; wherein, though the defendant answers upon his oath, yet such oath is not conclusive to the plaintiff; but he may prove every article by other evidence, in contradiction to what the defendant hath sworn. So that wager of law is now quite out of use, being avoided by the mode of bringing the action, but still it is not out of force. And therefore when a new statute inflicts a penalty, and gives an action of debt to recover it, it is usual to add, *in which no wager of law shall be allowed.* 3 Black. 347.

WAGGONS, WAINS, AND CARTS, are by the 23 G. 3. c. 66. subjected to annual duties; which, by the 25 G. 3. c. 47. are put under the management of the commissioners of the window duties.

WAIFS, are goods stolen and *waived* or thrown away by the thief in his flight, for fear of being apprehended. These are given to the king by the law, as a punishment upon the owner for not himself pursuing the felon, and taking away his goods from him. And therefore, if the party robbed do his diligence immediately to follow and apprehend the thief (which is called making fresh suit), or do convict him afterwards, or procure evidence to convict him, he shall have his goods again. 1 Black. 296.

Waived goods do also not belong to the king until seized by some person to his use; for if the owner seise them first, though at the distance of twenty years, the king shall never have them. *Id.* 297.

If the goods are hid by the thief, or left any where by him, so that he had them not with him when he fled, and therefore did not throw them away in his flight, they are not waived, but the owner may have them again when he pleases. *Id.*



Waifs have most commonly been granted by the king to the lords of manors respectively.

**WAINAGE.** The reasonableness of fines or amercements having been regulated by *magna charta*, that no person shall have a larger amercement imposed upon him than his circumstances or personal estate will bear, it is added, "saving to the freeholder his contenment or land; to the trader his merchandize; and to the countryman his *wainage* or team and instruments of husbandry." 4 *Black.* 379. See **GAINAGE.**

**WAKE,** is the ancient customary festival annually celebrated on the day of that saint to which the church was dedicated. It received the name of *vigil* or *wake*, from the people resorting to the church on the evening before, and their *waking* and performing their devotions. *Ken. Par. Ant.* 609.

**WALES.** By the 27 *Hen. 8. c. 26.* and other subsequent statutes, the dominion of *Wales* shall be incorporated with and part of the realm of *England*; and all persons born in *Wales* shall enjoy all liberties and privileges as the subjects in *England* do. And the lands in *Wales* shall be inheritable after the *English* tenure, and not after any *Welsh* laws or customs. And the proceedings in all the law courts shall be in the *English* tongue. A session is also to be held twice a year in every county, by judges appointed by the king, to be called the great sessions of the several counties in *Wales*; in which all pleas of real and personal actions shall be held, with the same form of process, and in as ample manner, as in the court of common pleas at *Westminster*; and writs of error shall lie from judgments therein to the court of king's bench at *Westminster*. But the ordinary original writs, or process of the king's courts at *Westminster*, do not run into the principality of *Wales*; though process of execution does, as also do all prerogative writs; as writs of *certiorari*, *quo minus*, *mandamus*, and the like. 3 *Black.* 77.

Murders and felonies in any part of *Wales* may be tried in the next adjoining *English* county; the judges of assize having a concurrent jurisdiction throughout all *Wales* with the justices of the grand sessions. *Str.* 553.

And all local matters arising in *Wales* triable in the king's bench, are by the common law to be tried by a jury returned from

from the next adjoining county in *England*. *Burr. Mansf.* 859.

By the 11 & 12 *W. c.* 9. no sheriff or other officer within the principality of *Wales*, shall, upon any process out of the courts at *Westminster*, hold any person to special bail, unless an affidavit be first made in writing, signifying that the cause of action is 20*l.* or upwards.

**WAPENTAKE**, (*Sax.* from *weapon*, and *tac, tactus*;) is all one with what we call a hundred, specially so used in some of the northern counties. The word seems to have had its origin from hence: When first this kingdom, or part thereof, was divided into hundreds, he who was the chief of the hundred, whom we now call the high constable, as soon as he entered upon his office, appeared in the field on a certain day on horseback, with a pike in his hand, and all the chief men of the hundred met him there with their lances, and touched his pike; which was a sign that they were firmly united to each other, by touching of their weapons. *Hoveden. Fleta, b. 3.*

**WAR**, time of. When the courts of justice are open, so that the king's judges distribute justice to all, and protect men from wrong and violence, it is said by our law to be a time of peace: but when, by invasion, insurrection, rebellion, or the like, the peaceable course of justice is stopped, this is adjudged to be a time of *war*. And this shall be tried by the records and judges, whether justice at such a time had her equal course of proceeding or not. For time of war gives privilege to them that are in war, and all others within the kingdom. So if a man be disseised in time of peace, and a descent is cast in time of war, this shall not take away the entry of the disseisee. 1 *Inst.* 249.

**WARDSHIP**. When the tenant died, and his heir was under the age of twenty-one, being a male, or fourteen, being a female, the lord was intitled to the wardship of the heir, and was called the guardian in chivalry. This wardship consisted in having the custody of the body and lands of such heir, without any account of the profits, till the age of twenty-one in males, and fourteen (which was afterwards advanced to sixteen) in females. For the law supposed the heir male unable to perform knights service till twenty-one; but as for the female, she was supposed capable at fourteen

to marry, and then her husband might perform the service.  
2 *Black.* 67.

WARDS AND LIVERIES, court of, was established by the statute 32 *H. 8. c. 46.* to inquire of wardships, liveries, and all the numerous incidents of knights service; from the burden whereof the subject was delivered by the statute 12 *C. 2. c. 24.*

WARRANT, is a power and charge to a constable or other officer to apprehend a person accused of any crime. It may be issued in extraordinary cases by the privy council, or secretaries of state; but most commonly it is issued by justices of the peace. This they may do in any cases where they have a jurisdiction over the offence, in order to compel the person accused to appear before them; for it would be absurd to give them power to examine an offender, unless they had also a power to compel him to attend and submit to such examination. And this extends to all treasons, felonies, and breaches of the peace; and also to all such offences as they have power to punish by statute. 4 *Black.* 290.

Before the granting of the warrant, it is fitting to examine upon oath the party requiring it, as well to ascertain that there is a felony or other crime actually committed, without which no warrant should be granted; as also to prove the cause and probability of suspecting the party against whom the warrant is prayed. *Id.*

This warrant ought to be under the hand and seal of the justice; should set forth the time and place of making, and the cause for which it is made; and should be directed to the constable, or other peace officer, or it may be to any private person by name. 4 *Black.* 291.

A general warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and void for its uncertainty; for it is the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion. Also a warrant to apprehend all persons guilty of such a crime, is no legal warrant; for the point upon which its authority rests, is a fact to be decided on a subsequent trial; namely, whether the person apprehended thereupon be guilty or not guilty. *Id.*

When

When a warrant is received by the officer, he is bound to execute it, so far as the jurisdiction of the magistrate and himself extends. A warrant from any of the justices of the court of king's bench extends over all the kingdom, and is tested or dated *England*: but a warrant of a justice of the peace in one county, must be backed, that is, signed, by a justice of another county, before it can be executed there. And a warrant for apprehending an English or a Scotch offender, may be indorsed in the opposite kingdom, and the offender carried back to that part of the united kingdom in which the offence was committed. 4 *Black.* 291.

**WARRANT TO CONFESS JUDGMENT.** The course for one to acknowledge a judgment for debt, is for him that doth acknowledge it, to give a general warrant of attorney to any attorney, or to some particular attorney of that court where the judgment is to be acknowledged, to appear for him at his suit, against the party who is to have the judgment acknowledged unto him, and thereupon to confess judgment for the sum demanded, together with costs of suit.

**WARRANTY.** By the civil law, every man is bound to warrant the thing that he selleth or conveyeth, although there be no express warranty; but the common law bindeth him not, unless there be a warranty either in deed or in law. 1 *Inst.* 102.

Warranty of *lands*, is whereby the grantor doth, by an express clause in the deed, for himself and his heirs, warrant and secure to the grantee the estate so granted: and this the heir is bound to perform, provided he hath assets by descent. 2 *Black.* 300. 302.

With respect to *goods and chattels*, the purchaser may have a satisfaction from the seller, if he sells them as his own, and the title proves deficient, without any express warranty for that purpose: but with regard to the *goodness* of the wares so purchased, the vendor is not bound to answer, unless he expressly warrants them to be sound and good; or unless he knew them to be otherwise, and hath used any art to disguise them; or unless they turn out to be different from what he represented to the buyer; for in such cases, this artifice shall be equivalent to an express warranty, and the vendor shall be answerable for their goodness. 2 *Black.* 452. 3 *Black.* 165.



In contracts for provisions, there is an *implied* warranty, that they are wholesome; and if they be not, an action on the case lies to recover damages for this deceit. 2 Black. 165.

And in all cases, where he that selleth any thing doth upon the sale warrant it to be good, the law annexes a tacit contract to this warranty, that if it be not so, he shall make compensation to the buyer. *Id.*

But such warranty must be upon the sale; for if it be made after, and not at the time of the sale, it is a void warranty; for then the buyer doth not take the goods upon the credit of the vendor. 3 Black. 165.

**WARREN**, is a franchise erected for preservation or *custody* (as the word *warren* properly signifies) of beasts and fowls of warren.

The beasts of warren, are hares, conies, and roes: the fowls of warren, are either field-fowl, as partridges, rails, and quails; or wood-fowl, as pheasants and woodcocks; or water-fowl, as mallards and herons. 1 Inst. 233.

These were looked upon as royal game, and the franchise of free warren was invented to protect them, by giving the grantee a sole and exclusive power of killing such game, so far as his warren extended, on condition of his preventing other persons. For by the common law, no man, not even a lord of a manor, could justify killing game on another man's soil, or even on his own, unless he had the liberty of free warren. 2 Black. 39.

But now this franchise is almost fallen into disregard, since the modern statutes for preserving the game; the name being now chiefly preserved in grounds that are set apart for breeding hares and conies. *Id.*

A person may have a warren in another man's land; for one may alienate the land, and reserve the franchise: but none can make a warren, and appropriate those creatures that are *feræ naturæ*, without licence from the king, or where a warren is claimed by prescription. *Id.*

#### WASTE:

1. **WASTE**, *vastum*, is a spoil or destruction of houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee simple or fee tail. 2 Black. 281.

2. Waste

2. Waste is either *voluntary*, which is a crime of *commission*, as by pulling down an house; or *permissive*, which is a matter of *omission* only, as by suffering it to fall for want of necessary reparations. *Id.*

3. Waste may be done in *houses*, by pulling them down, or by suffering the same to be uncovered, whereby the spars, rafters, or other timber of the house, are rotted. *1 Inst. 53.*

But if the house be uncovered when the tenant cometh in, it is no waste in the tenant to suffer the same to fall down. But though the house be ruinous at the tenant's coming in, yet if he pull it down, it is waste, unless he build it again. *Id.*

Also if glass windows, though glazed by the tenant himself, be broken down, or carried away, it is waste; for the glass is part of the house. And so it is of wainscot, benches, doors, windows, furnaces, and the like, annexed or fixed to the house, either by him in reversion, or by the tenant. *Id.*

4. If waste be done by the enemies of the king, the tenant shall not answer for the waste done by them. The same law it is, if the waste be done by tempest, lightning, or the like, the tenant shall not answer for it. *2 Inst. 303.*

And by the 6 *An. c. 31. f. 6.* no action shall be had against any person in whose house or chamber any fire shall accidentally begin; nor any recompence be made by such person for any damage sustained thereby.

But in such cases of accident, the tenant for his habitation may, if he will, build the premises again with such materials as remain, and with other timber which he may take growing on the ground; but he must not make the house larger than it was before. *1 Inst. 53.*

So if a lessee throws down a wall or partition between one chamber and another, it is waste; for it is not intended for the benefit of the lessor, nor is it in the power of the lessee to transpose the house. *2 Roll's Abr. 815.*

5. If the tenant of a dove house, warren, park, fish pond, or the like, do take so many of the animals therein, as such sufficient store be not left as he found when he came in, this is waste. *1 Inst. 53.*

Burning the soil, in order to convert it to tillage, is waste; for thereby the soil is consumed. *22 Vin. 441.*

6. Waste may be committed in timber trees; to wit, oak, ash, and elm, (and these are timber trees in all places,)

either by cutting them down, or topping them, or doing any act whereby the timber may decay. Also in countries where timber is scarce, and beeches, or the like, are converted to building, they also are accounted timber.

1 *Inst.* 53.

7. If a house be ruinous at the time of the lease made, if the lessee suffer the house to fall down, he is not punishable for waste; for he is not bound by law to repair the house in that case: but yet if he cut down timber upon the ground so letten, and repair it, he may well justify it; and the reason is, for that the law doth favour the supportation and maintenance of houses of habitation for mankind,

1 *Inst.* 54.

So if the lessor by his covenant undertakes to repair the house, yet the lessee (if the lessor doth it not) may with the timber growing upon the ground repair it, though he be not compellable thereto. *Id.*

But the tenant cannot fell trees, and with the money cover the house, for the sale is waste. 1 *Inst.* 53.

And if after cutting down the timber, the tenant suffer the young germins to be destroyed by the eating of beasts, it is waste; and although they grow again, yet it is waste: for after such eating, they never will be great trees, but shrubs. 2 *Roll's Abr.* 815.

8. The tenant, unless restrained (which is usual) by particular covenants or exceptions, may take sufficient housebote, hedgebote, firebote, and ploughbote, and it is no waste. 1 *Inst.* 53.

But he may not cut off the top boughs, for that will cause the putrefaction of the whole tree. *Cro. Eliz.* 361.

9. Digging for gravel, lime, clay, brick, earth, stone, or the like, or for mines of metal, coal, or the like, hidden in the earth, and which were not open when the tenant came in, is waste; but the tenant may dig for gravel or clay for the reparation of the house, as well as he may take convenient timber trees. 1 *Inst.* 53.

10. It is waste to suffer a wall of the sea to be in decay, so as by the flowing and reflowing of the sea, the ground be surrounded, whereby it becomes unprofitable: but if it be surrounded suddenly by the rage and violence of the sea, occasioned by wind or tempest, without any default in the tenant, this is no waste punishable. So it is, if the tenant repair not the banks or walls against rivers or other waters.

1 *Inst.* 53.

11. All tenants for life, or for any less estate, are punishable or liable to be impeached for waste, both voluntary and permissive; unless their leases be made, as sometimes they are, without impeachment of waste; that is, with a provision that no one shall impeach or sue him for waste committed. 2 *Black.* 283.

But tenant in tail after possibility of issue extinct, is not impeachable for waste, because the inheritance was once in him.

12. He who has the remainder for life only, is not intitled to sue for waste, because his interest may never perhaps come into possession, and then he hath suffered no injury. 3 *Black.* 225.

But a parson, vicar, archdeacon, prebendary, and the like, who are seised in right of their churches of any remainder or reversion, may have an action of waste; for they, in many cases, have, for the benefit of the church and of the successor, a fee simple qualified. *Id.*

13. By the statute of 13 *Ed. 1. c. 22.* where two or more hold wood, turf land, or fishing, or other such thing, in common, where none knoweth his several, and some of them do waste against the minds of the other, an action shall lie by a writ of waste. And this extends also to jointenants. 2 *Inft.* 403.

But it doth not extend to coparceners, because they were compellable to make partition by the common law. *Id.*

14. The redress for this injury of waste is of two kinds, preventive and corrective; the former whereof is by writ of *estrepement*, the latter by writ of waste. 3 *Black.* 225.

*Estrepement* is an old French word, signifying extirpation, which is the same as waste. And this writ lay at common law, after judgment obtained in any real action, and before possession was delivered by the sheriff, to stop the vanquished party from committing any waste in the mean time; and by the statute of Gloucester, 6 *Ed. 1. c. 5.* it may be had to prevent any waste pending the suit. *Id.*

And by virtue hereof, the sheriff may resist them that do or offer to do waste; and if otherwise he cannot prevent them, he may lawfully imprison the wasters, or make a warrant to others to imprison them: or if necessity require, he may take the power of the county to his assistance. *Id.*

But



But now the most usual way of preventing waste, is by *injunction* out of a court of equity, upon a bill exhibited. 3 *Black.* 227.

15. Where a *mortgagor* commits waste, the court will restrain him by injunction, because the whole estate is a security. 3 *Atk.* 210.

So if a *mortgagee* in fee in possession, commits waste by cutting down timber, and the money arising by the sale of the timber is not applied in sinking the interest and principal of his mortgage; the court, on a bill brought by the mortgagor to stay waste, will grant an injunction. 3 *Atk.* 723.

16. Though a person be tenant for life without impeachment of waste, yet the court will grant an injunction to restrain him from cutting down trees in lines, or avenues, or ridges in a park, which are for shelter or ornament: and it is the same thing whether they were planted for that purpose, or grow natural. 3 *Atk.* 215, 216.

17. Also tenant for life without impeachment of waste, shall be obliged to keep tenants houses in repair, unless the charge is excessive, and shall not suffer them to run to ruin. 2 *Atk.* 383.

18. Trustees to preserve contingent remainders, may bring a bill to stay waste in the tenant for life. 3 *Atk.* 95.

19. The court will grant an injunction to stay waste, in favour of an infant *in ventre sa mere*. 2 *Atk.* 117.

20. If a parson or vicar waste the trees of the parsonage or vicarage, the patron may have a prohibition. 2 *Roll's Abr.* 813.

And lord *Coke* says, waste by the incumbent in houses and buildings is a good cause of deprivation. 3 *Inst.* 204.

21. A *writ of waste*, to punish the offence after it has been committed, is an action partly founded upon the common law, and partly upon the statute of *Gloucester* aforesaid; and may be brought by him that has the immediate estate of inheritance in reversion or remainder, against the tenant for life, tenant in dower, tenant by the curtesy, or tenant for years. 3 *Black.* 227.

This action of waste is a mixed action; partly real, so far as it recovers land; and partly personal, so far as it recovers damages: for it is brought for both those purposes; and if the waste be proved, the plaintiff shall recover the thing or place wasted, and also treble damages by the said statute of *Gloucester*, 6 *Ed.* 1. c. 5.

The

The writ of waste calls upon the tenant to appear and shew cause why he hath committed waste and destruction in the place named, to the disherison of the plaintiff. And if the defendant makes default, or doth not appear at the day assigned him, then the sheriff is to take with him a jury of twelve men, and go in person to the place alleged to be wasted, and there inquire of the waste done, and the damages; and make a return or report of the same to the court, upon which report the judgment is founded. 3 *Black.* 228.

But if the defendant appears to the writ, and afterwards suffers judgment to go against him by default, or not putting in an answer, this amounts to a confession of the waste; since, having once appeared, he cannot afterwards pretend ignorance of the charge. In this case, therefore, the sheriff shall not go to the place to inquire of the fact, whether any waste has or has not been committed, for this is already ascertained by the tacit confession of the defendant; but he shall only, as in defaults upon other actions, make inquiry of the *quantum* of damages. 3 *Black.* 228.

When the waste and damages are thus ascertained, either by confession, verdict, or inquiry of the sheriff, judgment is given, in pursuance of the said statute of *Gloucester*, that the plaintiff shall recover the place wasted, for which he shall have a writ of seisin, (provided the particular estate be still subsisting,) and also that the plaintiff shall recover treble the damages assessed by the jury; which he must obtain in the same manner as all other damages, in actions personal and mixed, are obtained, whether the particular estate be expired or still in being. *Id.* 229.

**WASSEL BOWL**, a large silver cup or bowl, wherein the Saxons at their entertainments drank *beal* (*health*) to one another. In the religious houses this bowl was set at the upper end of the table for the abbot, who began the health, or *paulum charitatis*. Hence fine white bread, or cakes, commonly used therewith, were called *wassel bread*.

**WATCH AND WARD.** One of the principal duties of both high and petty constables, arises from the statute of *Winchester*, which appoints them to keep watch and ward in their respective jurisdictions. Ward is chiefly intended of the day-time, in order to apprehend rioters and robbers on the

the highways. Watch is properly applicable to the night only, and begins at the time when ward ends, and ends when ward begins, to apprehend all rogues, vagabonds, and night walkers, and make them give account of themselves. 1 *Black.* 356.

The several hundreds into which the counties are divided, are sometimes called *wards*, as being the districts of the high constables for the aforesaid purposes.

**WATER**, in legal acceptance, is considered under the notion of land, in respect of the land that lies underneath it; and may be sued for under that name, as so many acres of land covered with water. 2 *Black.* 18.

**WATER ORDEAL.** The most ancient species of trial was by *ordeal*, which was of two sorts, *fire ordeal* and *water ordeal*. *Fire ordeal* was performed either by taking up in the hand, unhurt, a piece of red-hot iron; or else by walking barefoot and blindfold over nine red-hot plough-shares. *Water ordeal* was performed, either by plunging the bare arm up to the elbow in boiling water, and escaping unhurt thereby; or by casting the person suspected into a river or pond of cold water, and if he floated, it was deemed an evidence of his guilt, but if he sunk he was acquitted. But this superstition hath been long since abolished by act of parliament. It is easy from hence to trace out the barbarity still remaining in some countries to discover witches, by casting them into a pool of water, and by their sinking to prove their innocence. 4 *Black.* 342.

**WAY**, considered as a species of incorporeal hereditaments, is the right of going over another man's ground, in which a particular person may have an interest and a right, though another be the owner of the soil. This may be grounded on a special permission; as when the owner of the land grants to another a liberty of passing over his grounds, to go to the church, or market, or the like; in which case, the gift or grant is particular, and confined to the grantee alone, and dies with the person. A way may be also by prescription; as if all the owners and occupiers of such a farm have immemorially used to cross another's ground; for this immemorial usage supposes an original grant. A right of way also may arise by act and operation of law; for if a man grants to another a piece of ground in the middle of his

his field, he at the same time tacitly and impliedly gives him a way to come at it: for where the law gives any thing to any one, it gives impliedly whatever is necessary for enjoying the same. 2 *Black.* 35.

**WEIGHTS AND MEASURES.** The standard of *measures* was originally kept at *Winchester*; and we find in the laws of king *Edgar*, near a century before the conquest, an injunction that the one measure which was kept at *Winchester* should be observed throughout the realm. Most nations have regulated the standard of measures of *length* by comparison with the parts of the human body; as the thumb, the palm, the hand, the foot, the cubit, the ell (*ulna*, or arm,) the pace, and the fathom: but as these are of different dimensions in men of different proportions, our ancient historians inform us, that a new standard of longitudinal measure was ascertained by king *Henry* the first, who commanded that the yard should be made of the exact length of his own arm. And one standard of measures of length being gained, all others are easily derived from thence; those of greater length by multiplying, those of less by subdividing, that original standard. Thus, by the statute called *compositio ulnarum et perticarum*, five yards and an half make a perch; and the yard is subdivided into three feet, and each foot into twelve inches; which inches will be each of length of three grains of barley. *Superficial* measures are derived by squaring those of length; and measures of capacity by cubing them. 1 *Black.* 274.

The standard of *weights* was originally taken from corns of wheat, whence the lowest denomination of weights that we have is still called a *grain*; thirty-two of which are directed, by the statute called *compositio mensurarum*, to compose a penny-weight, whereof twenty make an ounce, and twelve ounces a pound. *Id.* 275.

And upon these principles the first standards were made, and by a variety of subsequent statutes were directed to be kept in the exchequer, and all weights and measures to be made conformable thereto. But, as Sir *Edward Coke* observes, though this hath so often by authority of parliament been enacted, yet it never could be effected; so forcible is custom with the multitude. For notwithstanding the many statutes which have been enacted, that there shall be but one weight and one measure throughout the realm, there always have been, and still are, two kinds of weights used in *England*,  
the



the one by law, and the other by custom; but they are for several sorts of wares or commodities; for there is *troy weight* and *averdupois*. *Troy weight* is by law; and thereby are weighed silk, gold, silver, pearl, and precious stones: and this hath to the pound twelve ounces. *Averdupois* is by custom, yet confirmed by statute; and thereby are weighed all kinds of grocery wares, drugs, butter, cheese, flesh, wax, pitch, tar, tallow, wool, hemp, flax, iron, steel, lead, and all other commodities which bear the name of garble, and whereof issueth a refuse or waste (and also bread, by 31 G. 2. c. 29.); and this hath to the pound sixteen ounces; and twelve pounds over are allowed to every hundred. *Dalt. c. 112.*

By statute 8 Hen. 6. c. 5. and 11 Hen. 7. c. 4. in every market town a common balance shall be kept, with common weights sealed, according to the standard of the exchequer; at which all the inhabitants may weigh without paying any thing; taking nevertheless of foreigners for every draught between 40lb. and 100lb. an halfpenny; between 100lb. and 1000lb. a farthing. And the clerk of the market or other proper officer shall seal all measures duly gaged brought unto him, by the standard in his possession; and may take for the same one penny for every bushel; an halfpenny for every half bushel or peck; and a farthing for every gallon, pottle, quart, pint, or half pint.

WEREGILD, was a pecuniary satisfaction paid to the party injured, or to his kindred, to expiate enormous offences. In the Saxon laws, particularly those of king *Athelstan*, we find the several weregilds in the case of homicide established in progressive order, from the death of the ceorl, or peasant, up to that of the king himself. The weregild of a ceorl was 266 thrymsas, that of the king 30,000; each thrymsa being equal to about a shilling of our present money. The weregild of a subject was paid intirely to the kindred of the party slain; but that of the king was divided, one half being paid to the public, the other to the royal family. 4 *Black. 313.*

WEST-SAXON LAGE. West-Saxon law, was a code of laws compiled by king *Alfred* from the laws introduced by the Saxons into this kingdom; as the *Danelage* was that introduced by the Danes; and the *Mercenlage* was that which was used in the ancient kingdom of *Mercia*. And these seem partly

partly to have composed what is now known by the name of the common law. 1 *Black.* 65. 4 *Black.* 412.

**WHARFAGE**, is money paid for landing goods at a wharf, or for shipping and taking goods into a boat or barge from thence.

**WHITE RENTS**, *redditus albi*, were so called, because they were paid in silver, to distinguish them from rent cummin, rent corn, rent cattle, and the like. 2 *Inst.* 19.

**WIDOW'S CHAMBER**, is the widow's apparel and furniture of a bed chamber, which, throughout the province of *York*, and in the city of *London*, the widow is intitled to, over and above her distributive share of the personal estate of her husband dying intestate.

**WIFE.** See **HUSBAND.**

#### WILL:

1. *Who may make a will.*
2. *Will of lands.*
3. *Will of goods.*
4. *Nuncupative will.*
5. *Revocation of a will.*
6. *Rules concerning the construction of wills.*

##### 1. *Who may make a will.*

It is generally said, that an *infant* male at the age of fourteen years, and a female at the age of twelve years, may make a testament of goods and chattels. And this is by the rule of the civil law, which fixes the age of puberty and consent to marriage at those years. 2 *Black.* 497.

Madmen, idiots, or natural fools, persons grown childish by age or infirmity, and such as have their senses befuddled with drunkenness; so persons born deaf and dumb; persons under fear or restraint; or circumvented by fraud; persons outlawed, excommunicate, attainted of treason or felony; are incapable to make a will, so long as such disability continues. So also a married woman, unless by the express consent of her husband.

##### 2. *Will*

2. *Will of lands.*

BEFORE the conquest, lands were devisable by will: but upon the introduction of the military tenures, the restraint of devising lands necessarily took place, as a branch of the feudal doctrine of non-alienation, without the consent of the lord. And therefore, by the common law since the conquest, no estate greater than for term of years, could be disposed of by will; except only in *Kent*, and in some ancient boroughs, and a few particular manors, where the Saxon immunities by special indulgence subsisted. And though the feudal restraint on alienation by deed vanished very early, yet this on wills continued for some centuries after. But when ecclesiastical ingenuity had invented the doctrine of uses, as a thing distinct from the land, uses began to be devised very frequently, and the devisee of the use could in chancery compel its execution. But when the statute of uses, 2 *Hen. 8. c. 10.* had annexed the possession to the use, these uses, being now the very land itself, became no longer devisable; which might have occasioned a great revolution in the law of devises, had not the statute of wills been made about five years after, viz. 32 *Hen. 8. c. 1.* explained by 34 *Hen. 8. c. 5.* which enacted, that all persons being seized in fee simple (except *femes covert*, infants, idiots, and persons of non-sane memory) might by will in writing devise to any other person two thirds of their lands held in chivalry, and the whole of those held in socage; which now, by turning the tenure in chivalry into free and common socage by the statute 12 *C. 2. c. 24.* amounts to the whole of their landed property, except their copyhold, or other tenements in the nature of copyhold. And to prevent frauds in this private and less solemn way of passing lands, the statute 29 *C. 2. c. 3.* directs, that "all devises of lands shall be in writing and signed by the testator, or some other person in his presence, and by his direction; and attested by three or four credible subscribing witnesses." In the construction of which statute, it hath been adjudged, that the testator's name, written with his own hand, at the beginning of his will, as, "I, *John Stanley*, make this my last will and testament," is a sufficient signing, without any name at the bottom; though the other is the safer way. It has also been determined, that although the witnesses must all see the testator sign, or at least acknowledge the signing, yet they may do it at different times; but they must all subscribe their names as witnesses in his presence, lest by any possibility they

should mistake the instrument. Also it hath been determined, that it is not necessary that the testator should declare the instrument he executes to be his will; nor that the witnesses should know the contents; nor that they should attest every page, folio, or sheet; nor that each page, folio, or sheet, should be particularly shewn to them; but it may be material if one of the sheets was not in the room, when the other was executed and attested. 2 *Black.* 373. *Burr. Mansf.* 1775.

By the 25 *G. 2. c. 6.* a *legatee* may be a witness; and in order to take off the bias of interest, the statute makes void all legacies given to witnesses. And by the same statute, *creditors* are admitted to be witnesses, leaving their credit to be considered, on a view of all the circumstances, by the court and jury before whom such will shall be contested.

### 3. *Will of goods.*

A WRITTEN will of goods and chattels is not altered by the statute; and therefore it is not of necessity to have any subscribing witnesses to it; witnesses subscribing their names being first introduced by that statute. And if a testament of chattels is written in the testator's own hand, though it hath neither his name nor seal to it, nor witnesses present at its publication, it is good in law, provided sufficient proof can be had that it is his hand-writing. And though written in another man's hand, and never signed by the testator, yet if proved to be according to his instructions, and approved by him, it hath been held a good testament of the personal estate. Yet it is the safer and more prudent way, and leaves less in the breast of the ecclesiastical judge, if it be signed and sealed by the testator, and published in the presence of witnesses. 2 *Black.* 502.

### 4. *Nuncupative Will.*

No nuncupative will shall be good, where the estate bequeathed exceeds 30*l.*, unless proved by three witnesses present at the making thereof, and unless they or some of them were specially required to bear witness thereto by the testator himself; and unless it was made in his last sickness, in his own dwelling house, or where he had been resident ten days at the least, except he be surprised with sickness on a journey, or from home, and dies without returning. And it shall not be proved after six months from the making, unless it were put in writing in six days; nor until fourteen days after the death



of the testator; nor till process hath issued to call in the widow, or next of kin, to contest it if they think proper. 29 C. 2. c. 3.

#### 5. *Revocation of Wills.*

No will of lands shall be revocable, otherwise than by another will or writing declaring the same, signed in the presence of three witnesses; or by obliterating the same by the testator himself, or in his presence and by his direction. And no will of personal estate shall be revocable by any words or will by word of mouth only, except the same be in the life of the testator committed to writing and read to the testator and approved by him, and proved to be so done by three witnesses. 29 C. 2. c. 3.

#### 6. *Rules concerning the construction of Wills.*

In construing wills, the intention of the testator ought to prevail, if agreeable to the rules of law.

No particular form is necessary to convey the testator's meaning, but it must be collected from the will itself, by attending to the several parts of it, and comparing and considering them together. *Burr. Mansf.* 770.

Every clause in a will shall be construed so as to take effect according to the testator's intent, if it consists with the rules of law. 1 *Atk.* 416.

A court of equity is as much bound by positive rules and general maxims concerning property, as a court of law is. If the intention of the testator be contrary to the rules of law, it can no more take place in a court of equity than in a court of law. *Burr. Mansf.* 1108.

On the other hand, if the intention be not contrary to law, a court of common law is as much bound to construe and effectuate the will according to that intention, as a court of equity can be. *Id.*

If the name of a devisee be mistaken in a will, yet if the person is clearly made out by averment to be the person intended, and there can be no other to whom it may be applied, the devise to him is good. 1 *Atk.* 410.

Devise in restraint of marriage ought to be construed strictly against such restraint, and in favour of the person attempted to be restrained; for such conditions are odious, and contrary to sound policy. *Burr. Mansf.* 2055.

An executory devise, to take place at a future time, ought not to exceed the compass of a life or lives in being, and twenty-one years after at the furthest. *Burr. Mansf.* 879.

By an ancient maxim of law, although the estate be limited to the ancestor expressly *for life*, and after his death to his heirs, (general or special,) the heir shall take by descent, and the fee shall vest in the ancestor. *Id.* 1106.

But where it is devised to one *for life only*, or *for life and not otherwise*, it shews the intention of the testator clearly; and the construction shall be made so as to effectuate that intention. *Id.* 1107.

### WILL :

1. TENANT *at will* is, where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor; by force of which lease, the lessee is in possession. In this case, the lessee is called tenant at will, because he hath no certain nor sure estate; for the lessor may put him out at what time it pleaseth him. *Litt. sect. 68.*

Yet if the lessee sows the land, and the lessor, after it is sown, and before the corn is ripe, put him out, the lessee shall have the corn; and shall have free entry, egress and regress, to cut and carry away the corn; because he knew not at what time the lessor would enter upon him. *Id.*

For when the law giveth any thing, it giveth impliedly whatsoever is necessary for the taking and enjoying it. And the law in this case doth not drive him to an action for the corn, but giveth him a speedy remedy to enter into the land, and to take and carry the corn away; and doth not compel him to take it at one time, or to carry it before it be ready to be carried; and therefore the law giveth all that is convenient; to wit, free entry, egress and regress, as much as is necessary. 1 *Bist.* 56.

So if a house be let to one, to hold at will, by force whereof the lessee entereth into the house, and brings his household stuff into the same, and afterwards the lessor puts him out; yet he shall have free entry, egress and regress, into the said house, by reasonable time, to take away his goods and utensils. So if a man seised of an house in fee simple, fee tail, or for life, hath certain goods within the said house, and maketh his executors, and dies; whoever after his decease hath the house, his executors shall have free entry,

egress and regress, to carry out of the same house the goods of their testator by reasonable time. *Litt. sect. 69.*

Also, if a man make a deed of feoffment to another, of certain lands, and delivereth to him the deed, but not livery of seisin; in this case, he to whom the deed is made, may enter into the land, and hold and occupy it at the will of him who made the deed; because it is proved by the words of the deed, that it is his will that the other should have the land: but he who made the deed may put him out when he pleases. *Litt. sect. 70.*

2. The lessor may, by actual entry into the ground, determine his will in the absence of the lessee; but by words spoken from the ground, the will is not determined, until the lessee hath notice; no more than the discharge of a factor, attorney, or such like, in their absence, is sufficient in law, until they have notice thereof. *1 Inst. 55.*

And it is regularly true, that every lease at will must in law be at the will of both parties; and therefore when the lease is made to have and to hold at the will of the lessor, the law implies it to be at the will of the lessee also; and consequently, the lessee hath the same power to determine the lease at his will as the lessor hath. *Ibid.*

And it seems to be now settled, that (besides the express determination of the lessor's will, by declaring that the lessee shall hold no longer) the exertion of any act of ownership by the lessor, as entering upon the premises and cutting timber, taking a distress for rent and impounding it thereon, or making a feoffment, or lease for years, of the land, to commence immediately; or any act of desertion by the lessee, as assigning his estate to another, or committing waste; or the death, or outlawry, of either lessor or lessee; puts an end to, or determines, the estate at will. *2 Black. 146.*

Finally, the courts at law have of late years leaned against construing demises, where no certain term is mentioned, to be tenancies at will; but have rather held them to be tenancies from year to year, so long as both parties please, especially where an annual rent is reserved; in which case, they will not suffer either party to determine the tenancy, even at the end of the year, without reasonable notice to the other. *2 Black. 147.*

And in *Timmins and Rowlinson, H. 5. G. 3.* it was said by Mr. Justice *Wilmet*, in the country, leases at will being found in the strict legal notion of a lease at will extremely inconvenient, exist only *notionally*; and were succeeded by another

another species of contract less inconvenient. At first it was indeed settled to be for a year certain, and then the landlord might turn out the tenant at the end of the year. It is now established, that if a tenant takes from year to year, either party must give a *reasonable* notice before the end of the year, though that *reasonable* notice varies according to the custom of different counties. *Burr. Mansf.* 1603.

3. Tenant at will, in like manner as tenant for years, hath incident to, and inseparable from his estate, unless by special agreement, reasonable estovers of housebote, firebote, ploughbote, and haybote. *1 Inst.* 41.

**WINCHESTER MEASURE**, a standard of eight gallons originally kept at *Winchester*, according whereunto regulations ought to be made of all measures throughout the kingdom. But so prevalent is custom, that although it has been enacted by divers statutes, that there ought to be only one weight and one measure throughout the realm, yet this could never be effected; but the weights and measures continue different still in different places. *1 Black.* 274.

**WINDOW DUTY.** By several statutes a duty is imposed on every dwelling-house inhabited; and also on windows and lights, according to the number thereof; and on houses of 5*l.* a year and upwards, according to their value; which are to be under the management of the commissioners of the land tax. For which duties, see *Burn's Justice*, tit. *House*.

**WINE.** By the 26 *G. 3. c. 59.* every wholesale dealer in foreign wine shall take out a licence annually from the officers of excise.

And by the 30 *G. 3. c. 38.* every retailer of foreign wine shall also take out a licence annually in like manner.

**WIRE.** By the 24 *G. 3. c. 41.* every wire-drawer shall take out a licence annually from the officers of excise.

And by 27 *G. 3. c. 13.* several duties are imposed on wire imported; and also on all wire made in *Great Britain*, to be paid by the maker.

**WITCHCRAFT.** By the 9 *G. 2. c. 5.* no prosecution shall be commenced or carried on against any person for witchcraft, sorcery, incantment, or conjuration, or for charging another with any such offence. But if any person shall pre-



tend to exercise or use any kind of witchcraft, sorcery, incantment, or conjuration; or undertake to tell fortunes; or pretend, from his skill or knowledge in any occult or crafty science, to discover where, or in what manner, any goods, supposed to have been stolen or lost, may be found; he shall be imprisoned for a year, and once in every quarter of that year stand openly on the pillory for an hour, and further shall be bound to the good behaviour as the court shall award.

**WITE**, Sax. a punishment or penalty. So *witefree* is an immunity from fines and amercements. *Witeless*, free from censure or blame.

**WITHERNAM**, (from the Saxon *weder*, which common speech hath turned to *oder*, *other*; and *naam*, a caption or taking,) is where a distress is driven out of the county, and the sheriff upon a replevin cannot make deliverance to the party distrained; in this case, the writ of *withernam* is directed to the sheriff, for the taking as many of his beasts or goods that did thus unlawfully distrain, into his keeping, till the party make deliverance of the first distress. 2 *Inj.* 140, 1.

**WITNESS.** See EVIDENCE.

**WITNESSMAN**, was a man dwelling out of the limits of the forest, summoned to attend the forest courts, as a witness, or to be sworn on an inquest; and it was part of the tenure of several of the mesne lords holding under the lords of the forest, that they should *find unto the foresters witnessman*; that is, compel such their tenants to appear there, and be sworn for the purposes aforesaid.

**WITTENA-GEMOT**, was a convention or assembly of wise men, to assist the king with their counsel in the nature of our present parliament.

**WOOD.** If any offender shall wilfully and maliciously, without the consent of the owner, cut down, destroy, break, bark, burn, deface, spoil, or carry away, any wood, or springs of wood, underwood or coppice wood, he shall be imprisoned three months in the house of correction, and be publicly whipped once a month. 6 G. c. 16.

And

And every person who shall wilfully cut or break down, bark, burn, pluck up, lop, top, crop, deface, damage, spoil, or destroy, or carry away, any timber tree without consent of the owner, shall forfeit not exceeding 20*l.*: and for a second offence, 30*l.* 6*G.* 3. *c.* 48.

WOODGELD, a fine for cutting wood in the forest.

WOODMOTE, is the old name of that court of the forest which is now called the *court of attachments*, for looking after the wood or covert for the deer.

WOOL. By the 28*G.* 3. *c.* 38. wool is prohibited to be exported, on forfeiture of 3*s.* a pound, or 50*l.* in the whole, at the option of the person who shall sue; and the offender shall also suffer solitary imprisonment, for three calendar months, and until the penalty be paid, not exceeding twelve calendar months; and the wool shall be forfeited, and the vessels, carriages, horses, or other beasts, used in conveying the same.

WRECK, of the sea, in legal understanding, is applied to such goods, as, after shipwreck at sea, are by the sea cast upon the land. 2 *Inst.* 167.

By the ancient common law, where any ship was lost at sea, and the goods or cargo were thrown upon the land, these goods, so wrecked, were adjudged to belong to the king; for it was held, that, by the loss of the ship, all property was gone out of the original owner; but the rigour of this hath been mitigated in after times. And by the 3 *Ed.* 1. *c.* 4. if a man, a dog, or a cat, escape alive, the vessel shall not be adjudged a wreck. Which animals are only put for examples; for it is now held, that not only if any live thing escape, but if proof can be made of the property of any of the goods or lading which come to shore, they shall not be forfeited as wreck. 1 *Black.* 290.

The statute further ordains, that the sheriff shall be bound to keep the goods a year and a day; that if any person can prove a property in them, either in his own right, or by right of representation, they shall be restored to him without delay: but if no such property be proved within that time, they then shall belong to the king, or to him unto whom the

king hath granted the same. But if the goods are of a perishable nature, the sheriff may sell them; and the money shall be liable in their stead. *Id.* 292.

In order to constitute a legal wreck, the goods must come to land: if they continue at sea, the law distinguishes them by the appellations of *jetsam*, *flotsam*, and *ligan*. *Jetsam*, is where goods are cast into the sea, and there sink and remain under water: *flotsam*, is where they continue floating on the surface of the water: *ligan*, is where they are sunk in the sea, but tied to a cork or buoy, in order to be found again. These are also the king's, if no owner appears to claim them; but they are so far a distinct thing from the former, that they do not pass in a general grant of wreck. *Id.*

By the 27 *Ed.* 3. if any ship be lost on the shore, and the goods come to land, (which do not come under the denomination of wreck,) they shall be presently delivered to the merchants, paying only a reasonable reward to those that saved and preserved them, which is intitled salvage.

By the 12 *An. ft.* 2. c. 18. and 26 *G.* 2. c. 19. all head officers, and others of towns near the sea, shall, on application to them made, summon as many hands as are necessary, and send them to the relief of any ship in distress; and, in case of assistance given, salvage shall be paid by the owners, to be assessed by three neighbouring justices. And if any person shall plunder, steal, or destroy, any goods belonging to a ship in distress, (whether they be wrecked or not,) or any tackle, provision, or part of such ship; or shall beat or wound, or otherwise wilfully obstruct the escape of any person endeavouring to save his life from such ship, or the wreck thereof; or shall put out any false light, with intent to bring any vessel into danger; or shall make any hole in any such ship in distress; or steal any pump belonging thereto; or wilfully do any thing tending to the immediate loss of such ship; he shall be guilty of felony without benefit of clergy. Provided, that when goods of small value shall be stranded or cast on shore, and stolen without circumstances of cruelty, outrage, or violence, the offenders may be prosecuted for petit larceny only.

WRIT:

**WRIT :**

A WRIT is the king's precept, in writing under seal, issuing out of some court, to the sheriff or other person; and commanding something to be done, touching a suit or action, or giving commission to have it done. *T. L.*

Writs, in civil actions, are either *original* or *judicial*. *Original* writs are issued out of the court of chancery, for the summoning a defendant to appear, and are granted before the suit is begun, in order to begin the same; and *judicial* writs issue out of the court where the original is returned after the suit is begun.

**WRIT OF ERROR :**

A WRIT of error lies for some supposed mistake in the proceedings of a court of record; for, to amend errors in an inferior court, not of record, a writ of false judgment lies. 3 *Black.* 405.

The writ of error only lies upon matter of *law*, arising upon the face of the proceedings; so that no evidence is required to substantiate or support it: the method of reversing an error in the determination of *facts*, is commonly by a new trial, to correct the mistakes of the former verdict. *Id.*

He that brings the writ of error, must in most cases find substantial pledges of prosecution, to prevent delays by frivolous pretences, and for securing payment of costs and damages, if the determination shall go against him. *Id.* 410.

**WRIT OF INQUIRY :**

A WRIT of inquiry of damages, is a judicial writ, that issues out to the sheriff, commanding him to summon a jury, to inquire what damages the plaintiff hath sustained; and when this is returned with the inquisition, judgment is thereupon entered. 2 *Lill. Abr.* 721.

This writ lies on a judgment by default, in an action of the case, covenant, trespass, trover, or the like, or on a demurrer; but not on a verdict; for, in that case, the quantum shall be determined by the verdict. *Id.*

It is executed before the sheriff or his deputy (after due notice to the defendant); at the execution whereof, both parties have liberty to be heard before the sheriff, by their counsel or attorneys, and evidence may be given on both sides. *Id.*

If



If the plaintiff gives no evidence before the jury, yet they must find *some* damages, because the defendant hath confessed the action, and consequently hath admitted that there is damage. *Id.*

WRIT OF RIGHT OF ADVOWSON, was so called from the special words in the writ, requiring the party to *do right concerning the advowson*. By this, the inheritance of the advowson might have been recovered against an usurper; but the incumbent could not be removed for that turn. But afterwards it was provided, that if the true patron brought a possessory action of *darrein presentment*, or *quare impedit*, within six months after the avoidance, he should recover the intire presentation.

## Y E A

**YARDLAND**, *virgata terra*, is a quantity of land consisting (according to some) of twenty-four acres, whereof four yardlands make an hide, and five hides a knight's fee.

**YEAR.** By the statute 24 G. 2. c. 23. the year shall begin on the first day of *January*, and not as heretofore on the twenty-fifth of *March*.

And in legal proceedings, the year must be computed according to the calendar, and not according to twenty-eight days to the month. 2 *Inst.* 320.

So a legacy payable within so many months, shall be understood to signify calendar months. 3 *Atk.* 346.

**YEAR AND DAY**, is a time that determines a right, or works a prescription in many cases by law; as in case of an estray, if the owner challenge it not within that time, it belongs to the lord; so in like manner a wreck; so if a man be wounded or poisoned, and dieth thereof within a year and a day, it is murder. 1 *Inst.* 254.

YEAR,

**YEAR, DAY, AND WASTE**, is a part of the king's prerogative, whereby he hath the profits of lands and tenements for a year and a day, of those that are attainted of petit treason or felony, whosoever is lord of the manor whereto the lands or tenements do belong; and the king may cause waste to be made on the tenements, by destroying the houses, ploughing up the pastures and meadows, and rooting up the woods, except the lord of the fee agree with him for the redemption of such waste, afterwards restoring it to the lord of the fee. *Statf. Pr.* 44.

**YEARS** (estate for):

1. **TENANT** for term of years, is where a man letteth lands or tenements to another, for a certain term of years agreed upon between the lessor and the lessee; and when the lessee entereth by force of the lease, then is he tenant for term of years. *Litt. ffe.* 58.

If tenements be let to a man for term of half a year, or for a quarter of a year, or any less time; this lessee is respected as a tenant for years, and is styled so in some legal proceedings: a year being the shortest term which the law in this case takes notice of. *Litt. ffe.* 67.  
2 *Black.* 140.

2. Generally, every estate which must expire at a period certain and prefixed, by whatever words created, is an estate for years; and therefore this estate is frequently called a *term*; because its duration or continuance is bounded, limited, and determined. 2 *Black.* 143.

For every such estate must have a certain beginning, and certain end. If no day of commencement is named in the creation of this estate, it begins from the making, or delivery of the lease. A lease for so many years as such an one shall live, is void from the beginning; for it is neither certain, nor can ever be reduced to a certainty, during the continuance of the lease. *Ibid.*

And the same doctrine holds, if a parson make a lease of his glebe for so many years as he shall continue parson of such a church, for this is still more uncertain. But a lease for twenty or more years, if the parson shall so long live, or if he shall so long continue parson, is good; for there is a certain period fixed, beyond which it cannot last, though it may determine sooner, on the parson's death, or his ceasing to be parson there. 2 *Black.* 143.

3. An

3. An estate for years, though never so many, is inferior to an estate for life. For an estate for life, though it be only for the life of another person, is a freehold; but an estate, though it be for a thousand years, is only a chattel, and reckoned part of the personal estate. *Ibid.*

Hence it follows, that a lease for years may be made to commence *in futuro*, though a lease for life cannot. As if I grant lands to one from *Michaelmas* next for twenty years, this is good; but to hold from *Michaelmas* next for the term of his natural life, is void. *Ibid.*

For no estate of freehold can commence *in futuro*, because it cannot be created at common law without livery of seisin, or corporal possession of the land; and corporal possession cannot be given of an estate now, which is not to commence now, but hereafter. And because no livery of seisin is necessary for a lease for years, such lessee is not said to be *seised*, or to have true legal seisin of the lands. Nor indeed doth the bare lease vest any estate in the lessee, but only gives him a right of entry on the tenement, which right is called his *interest in the term*: but when he hath actually so entered, and thereby accepted the grant, the estate is then, and not before, vested in him; and he is *possessed*, not properly of the land, but of the term of years, the possession or seisin of the land remaining still in him who has the freehold. 2 *Black.* 144.

4. Tenant for term of years hath incident to, and inseparable from his estate, unless by special agreement, the same estovers that tenant for life is intitled to; namely, housebote, firebote, ploughbote, and haybote. 1 *Inst.* 41.

5. With regard to emblements, or profits of lands sowed by tenant for years, there is this difference between him and tenant for life; that where the term of tenant for years depends upon a certainty, as if he holds from *Midsummer* for ten years, and in the last year he sows a crop of corn, and it is not ripe and cut before *Midsummer*, which is the end of his term, the landlord shall have it; for the tenant knew the expiration of his term, and therefore it was his own folly to sow what he never could reap the profits of. 2 *Black.* 144.

But where the lease for years depends upon an uncertainty; as upon the death of the lessor, being himself only tenant for life, or being a husband seised in right of his wife; or if the term of years be determinable upon a life or lives: in all these cases, the estate for years not being certainly

tainly to expire at a time foreknown, but merely by the act of God, the tenant, or his executors, shall have the corn, in the same manner that a tenant for life or his executors shall be intitled thereto. 2 *Black.* 145.

But he shall not have the grafs, or other fruits, if they are not severed, because they are parcel of the inheritance.

6. A lease for *life* is not saleable by the sheriff upon execution for debt; but he may extend the yearly profits to pay the debt. But he may sell a term for *years* for debt, by writ of execution upon a judgment in the life-time of the owner, or when it is in the hands of executors or administrators.

YEOMAN, is a *Saxon* word, *geman*, (the *g* being turned into *y*, as in many like cases,) and signifies *land-man*; and is defined to be one that hath free land of 40*s.* a year; who was thereby heretofore qualified to serve on juries, and can yet vote for knights of the shire, and do any other act where the law requires one that is *probus et legalis homo*. Below yeomen are ranked tradesmen, artificers, and labourers. 2 *Inst.* 668.

#### YORK, YORKSHIRE:

1. In the county of *York*, only one panel of forty-eight jurors shall be returned to serve on the grand jury at the assizes; and at the quarter sessions not above forty, either upon the grand jury or other service there, 7 & 8 *W. c.* 32. And no person, having 15*l.* a year, shall be summoned to the sessions, but only persons less able to be at the expence of attending at the assizes. 1 *An. st.* 2. *c.* 13.

2. In order to render it more easy to borrow money upon land security within the several ridings in the said county, there are several acts of parliament directing memorials of all deeds and wills of lands to be registered within the said ridings respectively: viz. 2 & 3 *An. c.* 4. 5 *An. c.* 18. 6 *An. c.* 35. 8 *G. 2. c.* 6.

3. By the 4 *W. c.* 2. the inhabitants of the province of *York* have power to dispose of their whole personal estate by will; which before they had not, further than the testator's own proportionable part, called the *dead man's*, or *death's part*. For if the testator had a wife, and a child or children, the wife should have one third, the child or children another



third, and the remaining third was all that the testator had to dispose of. If he had a wife and no child, then she should have one moiety, and the other moiety remained to him to dispose of by his testament : so if he left a child or children, and no wife. But if he had neither wife nor child, then he might dispose of the whole. In case of intestacy, the same proportions continue to the wife and children to this day ; but the deadman's part shall be distributed according to the statute of distribution, 22 & 23 C. 2. c. 10

F I N I S.



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